MT LEGISLATIVE HISTORY

Chapter 684 1985

Bill H _____ (S) 110 Original bill & hist. ✓ C

H. Committee on Judiciary

Hearing Date(s) MAR 13 ✓ C

_____ C

_____ C

_____ C

Date Out MAR 13 ✓ C

S. Committee on Judiciary

Hearing Date(s) JAN 21 ✓ C

JAN 22 ✓ C

JAN 29 ✓ C

FEB 06 ✓ C

FEB 06 ✓ C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

SENATE BILL NO. 110

INTRODUCED BY MAZUREK, HALLIGAN

IN THE SENATE

January 15, 1985	Introduced and referred to Committee on Judiciary.
February 6, 1985	Committee recommend bill do pass as amended. Report adopted.
February 7, 1985	Bill printed and placed on members' desks.
February 9, 1985	Second reading, do pass as amended.
February 11, 1985	Correctly engrossed.
February 12, 1985	Third reading, passed. Ayes, 50; Noes, 0.
	Transmitted to House.

IN THE HOUSE

February 27, 1985	Introduced and referred to Committee on Judiciary.
March 13, 1985	Committee recommend bill be concurred in as amended. Report adopted.
March 16, 1985	Second reading, concurred in.
March 18, 1985	Third reading, concurred in.
	Returned to Senate with amendments.

IN THE SENATE

March 18, 1985	Received from House.
March 21, 1985	Second reading, pass consideration.
March 22, 1985	Second reading, amendments not concurred in. Ayes, 27; Noes, 17.
	On motion, Conference Committee requested and appointed.
April 11, 1985	Conference Committee dissolved.
	On motion, Free Conference Committee requested and appointed.
April 22, 1985	Free Conference Committee reported.
April 23, 1985	Second reading, Free Conference Committee report adopted.
	Third reading, Free Conference Committee report adopted.
	Free Conference Committee report adopted by House.
April 24, 1985	Sent to enrolling.
	Reported correctly enrolled.

Senate BILL NO. 110

INTRODUCED BY [signature]

A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING THE UNIFORM ARBITRATION ACT AND CONFORMING OTHER STATUTORY PROVISIONS THERETO; PROVIDING FOR APPLICABILITY TO LABOR AGREEMENTS; AMENDING SECTIONS 2-18-621, 27-1-412, 28-2-708, AND 71-3-801, MCA; AND REPEALING SECTIONS 27-5-101 THROUGH 27-5-105, 27-5-201 THROUGH 27-5-203, AND 27-5-301 THROUGH 27-5-304, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1 through 21] may be cited as the "Uniform Arbitration Act".

NEW SECTION. Section 2. Uniformity of interpretation. [Sections 1 through 21] must be construed to effectuate [their] general purpose to make uniform the law of those states that enact [them].

NEW SECTION. Section 3. Application to labor agreements. [Sections 1 through 21] apply to arbitration agreements between employers and employees or between their respective representatives unless otherwise provided in the agreement.

NEW SECTION. Section 4. Validity of arbitration agreement. A written agreement to submit an existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy arising between the parties after the contract is made is valid, enforceable, and irrevocable except upon such grounds as exist at law or in equity for the revocation of a contract.

NEW SECTION. Section 5. Proceedings to compel or stay arbitration. (1) On the application of a party showing an agreement described in [section 4] and the opposing party's refusal to arbitrate, the district court shall order the parties to proceed with arbitration; but if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of that issue raised and shall order arbitration if it finds for the applying party or deny the application if it finds for the opposing party.

(2) On application, the district court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. Such an issue, when in substantial and bona fide dispute, shall be immediately and summarily tried and the stay ordered if the court finds for the applying party. If the court finds for the opposing party, it shall order the parties to proceed to arbitration.

(3) If an issue referable to arbitration under the alleged agreement is involved in an action or proceeding

INTRODUCED BILL
SB 110

pending in a court having jurisdiction to hear applications under subsection (1), the application must be made in that court. Otherwise, and subject to [section 20], the application may be made in any court of competent jurisdiction.

(4) An action or proceeding involving an issue subject to arbitration must be stayed if an order or application for arbitration has been made under this section. If an issue is severable, the stay may be with respect to the severable issue only. When the application is made in such action or proceeding, the order for arbitration shall include such stay.

(5) An order for arbitration may not be refused on the ground that the claim in issue lacks merit or good faith or because no fault or grounds for the claim sought to be arbitrated have been shown.

NEW SECTION. Section 6. Appointment of arbitrators. If the arbitration agreement provides a method of appointment of arbitrators, this method shall be followed. If no method is provided, the agreed method fails or for any reason cannot be followed, or an appointed arbitrator fails or is unable to act and his successor has not been duly appointed, the district court on application of a party shall appoint one or more arbitrators. An arbitrator so appointed has all the powers of one specifically named in

the agreement.

NEW SECTION. Section 7. Majority action by arbitrators. The powers of the arbitrators may be exercised by a majority unless otherwise provided by the agreement or by [sections 1 through 21].

NEW SECTION. Section 8. Hearing. Unless otherwise provided by the agreement, the following apply:

(1) The arbitrators shall appoint a time and place for the hearing and cause notification to the parties to be served personally or by certified mail not less than 5 days before the hearing. Appearance at the hearing waives such notice. The arbitrators may adjourn the hearing from time to time as necessary and, on request of a party and for good cause or upon their own motion, may postpone the hearing to a time not later than the date fixed by the agreement for making the award unless the parties consent to a later date. The arbitrators may hear and determine the controversy upon the evidence produced, notwithstanding the failure of a party duly notified to appear. The district court on application may direct the arbitrators to proceed promptly with the hearing and determination of the controversy.

(2) The parties are entitled to be heard, present evidence material to the controversy, and cross-examine witnesses appearing at the hearing.

(3) The hearing must be conducted by all the

arbitrators, but a majority may determine any question and render a final award. If during the course of the hearing an arbitrator for any reason ceases to act, the remaining arbitrator or arbitrators appointed to act as neutrals may continue with the hearing and determination of the controversy.

NEW SECTION. Section 9. Representation by attorney. A party has the right to be represented by an attorney at any proceeding or hearing under [sections 1 through 21]. A waiver of this right prior to the proceeding or hearing is ineffective.

NEW SECTION. Section 10. Witnesses, subpoenas, and depositions. (1) The arbitrators may issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence and may administer oaths. Subpoenas so issued must be served and, upon application to the district court by a party or the arbitrators, enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action in district court.

(2) On the application of a party and for use as evidence, the arbitrators may permit a deposition to be taken, in the manner and upon the terms designated by the arbitrators, of a witness who cannot be subpoenaed or is unable to attend the hearing.

(3) All provisions of law compelling a person under subpoena to testify are applicable to persons subpoenaed under [sections 1 through 21].

(4) Fees for attendance as a witness are the same as for a witness in the district court.

NEW SECTION. Section 11. Award. (1) The award must be in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy to each party personally by certified mail or as provided in the agreement.

(2) An award must be made within the time fixed by the agreement or, if no time is fixed, within such time as the district court orders on application of a party. The parties may extend the time, in writing, either before or after the expiration thereof. A party waives the objection that an award was not made within the time required unless he notifies the arbitrators of his objection prior to the delivery of the award to him.

NEW SECTION. Section 12. Change of award by arbitrators. On the application of a party or, if an application to the court is pending under [section 14, 15, or 16], on submission to the arbitrators by the court under such conditions as the court may order, the arbitrators may modify or correct the award upon the grounds stated in [subsections (1)(a) and (1)(c) of section 16] or for the

purpose of clarifying the award. The application must be made within 20 days after delivery of the award to the applicant. Written notice thereof shall be given immediately to the opposing party, stating that he must serve his objections thereto, if any, within 10 days from the notice. A modified or corrected award is subject to the provisions of [sections 14, 15, and 16].

NEW SECTION. Section 13. Fees and expenses of arbitration. Unless otherwise provided in the agreement to arbitrate, the arbitrators' expenses and fees, together with other expenses, not including counsel fees, incurred in the conduct of the arbitration, must be paid as provided in the award.

NEW SECTION. Section 14. Confirmation of award by court. Upon the application of a party, the district court shall confirm an award unless within the time limits imposed in [sections 1 through 21] grounds are urged for vacating, modifying, or correcting the award, in which case the court shall proceed as provided in [sections 15 and 16].

NEW SECTION. Section 15. Vacating an award. (1) Upon the application of a party, the district court shall vacate an award if:

(a) the award was procured by corruption, fraud, or other undue means;

(b) there was evident partiality by an arbitrator

appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;

(c) the arbitrators exceeded their powers;

(d) the arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of [section 8], as to prejudice substantially the rights of a party; or

(e) there was no arbitration agreement and the issue was not adversely determined in proceedings under [section 5] and the party did not participate in the arbitration hearing without raising the objection.

(2) The fact that the relief was such that it could not or would not be granted by a court of law or equity is not grounds for vacating or refusing to confirm the award.

(3) An application under this section must be made within 90 days after delivery of a copy of the award to the applicant, except that if it is predicated upon corruption, fraud, or other undue means, it must be made within 90 days after such grounds are known or should have been known.

(4) In vacating the award on grounds other than those stated in subsection (1)(e), the court may order a rehearing before new arbitrators chosen as provided in the agreement

or, if the agreement does not provide a method of selection, by the court in accordance with [section 6] or, if the award is vacated on grounds set forth in subsection (1)(c) or (1)(d), the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with [section 6]. The time within which the agreement requires the award to be made is applicable to the rehearing and commences on the date of the order for rehearing.

(5) If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award.

NEW SECTION. Section 16. Modification or correction of award by court. (1) Upon application made within 90 days after delivery of a copy of the award to the applicant, the district court shall modify or correct the award if:

(a) there was an evident miscalculation of figures or an evident mistake in the description of any person, thing, or property referred to in the award;

(b) the arbitrators awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or

(c) the award is imperfect in a matter of form not affecting the merits of the controversy.

(2) If the application is granted, the court shall modify and correct the award to effect its intent and shall confirm the award as modified and corrected. Otherwise, the court shall confirm the award as made.

(3) An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

NEW SECTION. Section 17. Judgment on award -- costs. (1) Upon the granting of an order confirming, modifying, or correcting an award, judgment must be entered in conformity with the order and be enforced as any other judgment. Costs of the application and of the proceedings subsequent thereto and disbursements may be awarded by the court.

(2) The judgment may be docketed as if rendered in an action.

NEW SECTION. Section 18. Applications to court -- how made. Except as otherwise provided, an application to the court under [sections 1 through 21] must be by motion and must be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an order must be served in the manner provided by law for the service of a summons in an action.

NEW SECTION. Section 19. Jurisdiction of district

court. The making of an agreement described in [section 4] providing for arbitration in this state confers jurisdiction on the district court to enforce the agreement under [sections 1 through 21] and to enter judgment on an award under the agreement.

NEW SECTION. Section 20. Venue. An initial application must be made to the court of the county in which the agreement provides the arbitration hearing must be held or, if the hearing has been held, in the county in which it was held. Otherwise, the application must be made in the county where the adverse party resides or has a place of business or, if he has no residence or place of business in this state, to the court of any county. All subsequent applications must be made to the court hearing the initial application unless the court otherwise directs.

NEW SECTION. Section 21. Appeals. (1) An appeal may be taken from:

(a) an order denying an application to compel arbitration made under [section 5];

(b) an order granting an application to stay arbitration made under [section 5(2)];

(c) an order confirming or denying confirmation of an award;

(d) an order modifying or correcting an award;

(e) an order vacating an award without directing a

rehearing; or

(f) a judgment entered pursuant to the provisions of [sections 1 through 21].

(2) The appeal must be taken in the manner and to the same extent as from orders or judgments in a civil action in district court.

Section 22. Section 2-18-621, MCA, is amended to read:

"2-18-621. Unlawful termination. It shall be unlawful for an employer to terminate or separate an employee from his employment in an attempt to circumvent the provisions of 2-18-611, 2-18-612, and 2-18-614. Should a question arise under this section, it shall be submitted to arbitration as provided in ~~Title 27, chapter~~ 5 [sections 1 through 21] as if an agreement described in [section 4] is in effect, unless there is a collective bargaining agreement to the contrary applicable."

Section 23. Section 27-1-412, MCA, is amended to read:

"27-1-412. Obligations which cannot be specifically enforced. The following obligations cannot be specifically enforced:

(1) an obligation to render personal service or to employ another therein;

(2) an agreement to marry or live with another;

~~(3) an agreement to submit a controversy to arbitration;~~

~~(4)~~(3) an agreement to perform an act which the party has not power to perform lawfully when required to do so;

~~(5)~~(4) an agreement to procure the act or consent of the spouse of the contracting party or of any other third person; or

~~(6)~~(5) an agreement the terms of which are not sufficiently certain to make the precise act which is to be done clearly ascertainable."

Section 24. Section 28-2-708, MCA, is amended to read:

"28-2-708. Restraints upon legal proceedings void. Every stipulation or condition in a contract by which any party thereto is restricted from enforcing his rights under the contract by the usual proceedings in the ordinary tribunals or which limits the time within which he may thus enforce his rights is void. This section does not affect the validity of an agreement enforceable under [sections 1 through 21]."

Section 25. Section 71-3-801, MCA, is amended to read:

"71-3-801. Who may have lien -- amount. (1) All threshermen or swathers owning or operating threshing or swathing machines and all owners of combine harvesters and threshers shall have a lien upon the grain and other crops swathed or threshed by said threshing or swathing machine or cut and threshed by said combine harvester and thresher for and on account of the services rendered and the labor

performed by them on said grain and crops and which lien may be claimed by the owner of said grain for the reasonable value of such services if same are performed by him. Liens on grain and other crops shall be charged for at the prevailing price for that particular locality in which such grain or other crop is threshed, harvested, or combined, provided notices are given and lien is filed within the time provided by this part.

(2) If the prevailing price for threshing, harvesting, or combining grain or other crop is disputed by the thresherman or swather and the owner of the grain or other crop, the matter may be submitted to arbitration under the provisions of ~~chapter 5, Title 27~~ [sections 1 through 21]."

NEW SECTION. Section 26. Application not retroactive. This act applies only to agreements made subsequent to October 1, 1985.

NEW SECTION. Section 27. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 28. Repealer. Sections 27-5-101 through 27-5-105, 27-5-201 through 27-5-203, and 27-5-301 through 27-5-304, MCA, are repealed.

-End-

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

January 21, 1985

The tenth meeting of the Senate Judiciary Committee was called to order at 10:05 a.m. on January 21, 1985, by Chairman Joe Mazurek in Room 325 of the Capitol Building.

ROLL CALL: All committee members were present, with the exception of Senator Daniels, who was excused.

CONSIDERATION OF SB 66: Senator Mike Halligan, sponsor of SB 66, stated he submitted this proposition last session, but because of the press of the transmittal deadline, the committee elected to table it. This bill requires plain language in consumer contracts. It is an outgrowth of the nationwide concern or push for comprehensible language in contracts. It is premised on the common law principle that contract provisions not having been understood by the parties when entered into are void. Senator Halligan noted the bill does not address business-to-business contracts, just consumer contracts. Page 3, section 4, excludes some areas from plain language requirements. Senator Halligan indicated the committee should look at this section and determine whether it should include state governmental agencies. Section 6 goes on to limit the remedies of a consumer. There is a built-in statute of limitations--when your contract has been performed, your time to sue is up. Page 5, section 7, states the remedies are cumulative. In order to allow businesses to comply with this act, the applicability date proposed is January 1, 1986.

PROPONENTS: Scott J. Burnham, associate professor at the University of Montana School of Law, testified in support of SB 66. Professor Burnham stated his testimony represented his own views and not the views of the School of Law. He stated it is important that a contract be understood during performance and not just at the beginning. Professor Burnham provided the committee with written testimony in support of his position (see Exhibit 1). He stated that when a business goes through the process of translating an agreement to make it plain language, it often improves the substance of the agreement. He believes that when contracts are translated into plain language, there is a change in substance which benefits the consumer as well as a change in style. Sometimes courts will look on agreements favorably when they have attempted to draft them in language consumers can understand. Professor Burnham expressed some concerns he has with the bill (see page 2 of Exhibit 1). Professor Burnham stated he thinks the act is a thoughtful

no reason to perpetuate the plain language that should have been in a long time ago. As Mr. Bousliman indicated, this bill balances the needs of the consumers with the needs of the business people.

Hearing on SB 66 was closed. Chairman Mazurek turned the chair over to Senator Blaylock as he was one of the sponsors of the next two bills to be heard. Acting Chairman Blaylock then stated both SB 63 and SB 110 would be heard together, as their subject matter was similar.

CONSIDERATION OF SB 63 AND SB 110: Senator Halligan, sponsor of SB 63, stated the best way to describe this bill is to look at the title and read it. The purpose of the bill is to allow the option of arbitration to the parties. It is less costly and less time consuming. Also, the decision making process or dispute resolution of problems takes place in a more familiar place than litigation.

Senator Mazurek, sponsor of SB 110, stated the bill's purpose was to adopt the provisions of the Uniform Arbitration Act. Even though Montana has arbitration statutes on the books, there is existing case law and statutes in Montana which prohibit parties from agreeing in advance of a dispute to submitting it to arbitration. What this bill would do is allow parties in advance of any dispute arising agreeing to submit a dispute to arbitration and adopts the Uniform Arbitration Act which establishes the procedures under which an arbitration would occur and provides the means for enforcement of awards. The reasons for proposing the uniform act are it modernizes our current statutes and would bring Montana in line with the other states having the act. Montana and six other states do not have the uniform act in place. There is an effort to encourage states to get more involved in arbitration. It would take those matters of the parties outside the context of the court to allow them to be arbitrated. It is hoped that by allowing arbitration, we would have an impact on the current clogging of the courts. This bill would help get some of those matters out of those courts. It is a practice in this state already. This bill would allow either side of a dispute to enforce the arbitration proceedings. The bill is fairly broad. His principal concern is making the commercial setting where the parties are already arbitrating enforceable. He thinks arbitration is helpful in many settings; it is a less expensive, less cumbersome means of settling.

PROPONENTS: William Corbett, Professor of Law at the Univerisity of Montana Law School and an arbitrator, appeared in support of the bill. (See witness sheet and written testimony attached as Exhibit 17.) He stated his views are his own personal views and do not reflect those the University of Montana Law School or the University of Montana school system. Arbitration means that instead of taking up the courts time, we are asking a private third party to resolve the dispute. Both bills

attempt to resolve the future dispute. If there are some that shouldn't be going to arbitration, then exemptions should be written into the bill. The rule shouldn't be modeled after those few cases that shouldn't be handled by arbitrators. Charles Sande, of Billings, appeared in support of this bill. Judge Sande stated we have a great responsibility to make our legal system work. Today, we have a chance to examine something that might make our system a little bit better. To date, 44 states have adopted the Uniform Arbitration Act. He believes this is something that would be good for the state. We are not in a completely new field. Montana, North Dakota, Vermont, and three southern states are the only ones that haven't adopted the act. The objections that may be raised here have been raised in other states. These things have been considered. This is legislation whereby we would have another tool. It is completely voluntary. Cases take a long time to get to court. Once you get a decision from the district court, it may be appealed to the supreme court. By using arbitration, you avoid all of this pleading. Once you hear the arbitrators, you don't go to the supreme court, except in rare cases. You cannot appeal an award on the substance of the award. Arbitration also avoids publicity. This bill is not something that forces people to use arbitration. They would have to agree to do it. William Jensen, general counsel for Blue Cross of Montana, stated they are in favor of these bills. If the committee were to go to SB 63, they may want to amend 27-4-112. The Uniform Arbitration Act would allow them to negotiate with their groups, and they would be able to reduce the costs to their subscribers. (See witness sheet attached as Exhibit 18.) Scott J. Burnham, associate professor at the University of Montana Law School, appeared in support of this bill on his own behalf and not on behalf of the Law School. He stated we are only talking about arbitration where the parties have agreed to it, so the present law takes away a freedom of the parties, a freedom to contract. The courts are no longer jealous of jurisdiction. Professor Burnham anticipated objections to this bill about contracts that are not freely agreed to and whether that kind of arbitration clause should be enforced. He agreed with Judge Sande--we should not have exceptions. (See witness sheet and written testimony attached as Exhibit 19.) Karl Englund, of the Montana Trial Lawyers Association, stated that as lawyers, they were not afraid of this bill or that it will hurt their business, although they are concerned about contracts of adhesion. They have written alternative suggestions of amendment (see Exhibit 20). Terrence D. Carmody, on behalf of the Montana Association of Realtors, stated they support the bill (see witness sheet attached as Exhibit 21). Bill Olson, Secretary-Treasurer of the Montana Contractors Association, rose in support of the bills. He questioned how Section 6, page 4, works with regard to labor agreements. John Alke appeared on behalf of the Montana Physicians Service in support of the bills and stated he was available to answer any questions about the bill with regard to health insurance. (See also the witness sheet completed by Riley Johnson in

support of SB 110 attached as Exhibit 22.) (See witness sheet completed by Mike Rice, on behalf of Transystems, Inc., in support of SB 63 attached as Exhibit 23.) (See correspondence from Kenneth D. Bryson, of the Montana Arbitrators Association, in support of SB 110 attached as Exhibit 24.)

OPPONENTS: None.

CLOSING STATEMENT: None.

QUESTIONS FROM THE COMMITTEE: Senator Blaylock requested that Senator Mazurek respond to Mr. Olson's question. Senator Mazurek stated he didn't have an answer at this point, but believes the question needs to be looked into by the staff attorney, Mr. Petesch. Senator Towe addressed a question to Professor Burnham and Mr. Corbett. He then related an example of Nannabelle Nickleberry, an elderly lady agreeing in a home improvement contract to arbitrate a dispute in New York. Senator Mazurek responded that Senator Towe was raising a good example and we need to prepare an amendment to address that situation; it should be excepted out, as we need to get those situations out from the coverage of this act. Senator Towe asked even if we adopt the Montana Trial Lawyers Associations' amendments, will that do that. Senator Mazurek responded he would work with Senator Towe to address that situation.

Hearing on SB 63 and SB 110 was closed.

There being no further business to come before the committee, the meeting was adjourned at 12:20 p.m.

Chairman

Montana Trial Lawyers ASSOCIATION

Directors:
Richard W. Anderson
Milton Datsopoulos
Bernard J. Everett
Donald W. Molloy
Terry J. Hanson
Tom L. Lewis
William L. Madden, Jr.
Peter M. Meloy
James D. Moore
Sharon M. Morrison
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Executive Director:
Carol Harrison

PROPOSED AMENDMENT TO S.B. 110 -- UNIFORM ARBITRATION ACT

Delete: Page 1, line 25 after the word "agreement." to page 2, line 5. (All of the test of Section 4)

Add: Page 1, line 25 after the word "agreement." the following:

"(1) A written agreement to submit an existing controversy to arbitration is valid and enforceable except upon such grounds as exist at law or in equity for the revocation of a contract.

(2) A written agreement to submit to arbitration any controversy arising between the parties after the contract is made is valid and enforceable except upon such grounds as exist at law or in equity for the revocation of a contract. [Section 4 (2)] shall not apply to:

(a) Claims arising out of personal injury, based on contract or tort;

(b) Any agreement concerning or relating to insurance policies or annuity contracts except for those contracts between insurance companies;

(c) Any agreement which has not been concluded upon the advise of counsel to all parties as evidenced by counsel's signature thereto;

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(d) Claims for worker's compensation; and,

(e) Arbitration agreements between employers and employees or their respective representatives unless the agreement provides that [Section 4 (2)] shall apply.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 7
DATE 012985
BILL NO. SB 110

PROPOSED AMENDMENTS TO S.B. 110

Submitted by Blue Cross and Blue Shield

1. Page 1, line 25:

Following: "agreement"
Insert: "--exceptions"

2. Page 2, line 25:

Following: "."
Insert: "(1) Except as provided in subsection (2),

3. Page 2, line 3:

Following: "valid"
Delete: ","
Insert: "and"

4. Page 2, line 3:

Following: "enforceable"
Delete: ", and irrevocable"

5. Page 2, line 5:

Following: "contract."
Insert: "(2) Except as provided in subsection (3), a written agreement to submit to arbitration any controversy arising between the parties after the contract is made is not valid and enforceable in the following instances:

(a) Claims arising out of personal injury, based on contract or tort;
(b) Any agreement concerning or relating to insurance policies or annuity contracts except for those contracts between insurance companies;
(c) Any agreement which has not been concluded upon the advise of counsel to all parties as evidenced by counsel's signature thereto;
(d) Claims for worker's compensation; and
(e) Arbitration agreements between employers and employees or their respective representatives unless the agreement provides that subsection (1) shall apply.

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(3) The prohibitions and requirements of subsection (2) do not apply to or affect the validity of arbitration agreements under a membership contract as defined in Section 33-30-101(3) and subject to regulation under Title 33, Chapter 30.

6. Page 11, following line 15:

Insert: "No agreement concerning venue involving a resident of this state is valid unless the agreement requires that arbitration occur within the state of Montana. This requirement may only be waived upon the advise of counsel as evidenced by counsel's signature thereto."

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 8
DATE 012985
BILL NO. SB 110

secretary and chairman. Have at least 50 printed to start.)

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 012985 Senate Bill No. 110 Time 11:48

NAME	YES	NO
Senator Chet Blaylock	X	
Senator Bob Brown		X
Senator Bruce D. Crippen		X
Senator Jack Galt		X
Senator R. J. "Dick" Pinsoneault		X
Senator James Shaw		X
Senator Thomas E. Towe	X	
Senator William P. Yellowtail, Jr.	X	
Vice Chairman Senator M. K. "Kermit" Daniels	X	
Chairman Senator Joe Mazurek		X
	(4)	(6)

Cindy Staley
Secretary

Chairman

Motion: Adopt Trial Lawyers amendments

(include enough information on motion—put with yellow copy of committee report.)

Failed

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 9
DATE 012985
BILL NO. SB 110

(This sheet to be used by those testifying on a bill.)

NAME: Bill Corbett DATE: Jan 21 1985

ADDRESS: Law School - University of Montana

PHONE: 243-4741

REPRESENTING WHOM? myself

APPEARING ON WHICH PROPOSAL: SB 63 SA 110

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENT:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 17
DATE 012185
SB 63 SA 110

BEFORE THE MONTANA SENATE JUDICIARY COMMITTEE

Statement by William L. Corbett
Professor of Law, Arbitrator
University of Montana Law School
Missoula, Montana

IN SUPPORT OF SENATE BILLS #63 and #110.

I. What is Arbitration?

A consensual method of submitting a dispute to a private third party for resolution.

II. What Gives Rise to an Arbitration Case?

A. The existing dispute - two or more persons have a current dispute involving issues of law and/or fact and agree to submit it to arbitration.

B. The future dispute - two or more persons foresee they may have disputes in the future and agree to submit disputes that may arise involving issues of law and/or fact to arbitration.

III. The Problem with the Current Montana Law.

The Montana Supreme Court has held that Mont. Code Ann. § 27-5-101 precludes the enforcement of an agreement to submit to arbitration a future dispute involving legal issues. Moreover, if the parties submit such dispute to arbitration and the arbitrator issues an award, the award is unenforceable. See the attached article: Corbett, William L., "Arbitration in Montana and the Need for New Legislation," The Montana Lawyer, Vol. 6, No. 6, Feb. 1984.

As a consequence, the intent of the parties to submit to arbitration future disputes involving legal issues and an arbitration award of such disputes is not given effect.

IV. Why Does the Existing Law Make Unenforceable Agreements to Submit to Arbitration Future Disputes Involving Legal Issues?

At common law arbitration was viewed with much disfavor. The courts believed they should not be ousted of their traditional role in dispute settlement. Part of the reason for this disfavor was that a judge received a fee for each case. If private parties were allowed to resolve disputes involving legal issues, the income of the judges would fall.

The current Montana law was enacted in 1893 and has long been interpreted as adopting this common law notion.

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V. Why Do Parties Choose Arbitrators, Rather than Judges, to Resolve Their Disputes?

A. To save time - for example, building and construction cases.

B. To save money - for example, the winding up of a partnership.

C. The need for a specialized or expert decisionmaker - for example, building and construction disputes, labor management disputes and family disputes.

VI. Why is Arbitration Good for the Society?

A. Crowded court dockets often mean cases that should be heard by courts are unreasonably delayed. Arbitration helps lessen the number of disputes that come before the courts, reducing court dockets, and speeding up the resolution of important cases.

B. The crush of cases before the courts causes the costs of the judicial system to increase - a cost the taxpayer must bear. The cost of arbitrating disputes is paid by the parties to the dispute, not the taxpayers. Arbitration helps reduce the cost of the court system by reducing the number of cases.

VII. How the Legislature Should Handle the Exceptional Future Dispute Involving Legal Issues Believed Not Appropriate for Arbitration.

If there are future disputes involving legal issues the Legislature does not believe should be decided by arbitration, these disputes should be exempted. The mere fact there may exist a small percentage of disputes which are believed inappropriate for resolution by arbitration is not reason to prohibit the effective resolution of the vast majority of cases appropriate for arbitration.

The presumption should be to give effect to the intent of the parties to submit their disputes to arbitration. If the Legislature believes a particular future dispute involving legal issues should only be resolved by the courts, it should be treated as an exception. The exceptional case should not write the general rule.

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ARBITRATION IN MONTANA AND THE NEED FOR NEW LEGISLATION

By William L. Corbett
Associate Professor of Law
University of Montana
School of Law

This article reviews the current legal status of arbitration in Montana and compares the Montana law with the Uniform Arbitration Act. Legislative Enactment of the Uniform or similar legislation is necessary to enable Montana to join the vast majority of states that permit and encourage effective private dispute settlement through arbitration.

I. Arbitration at Common Law.

To clearly understand the current Montana law on arbitration it is necessary to understand arbitration at common law. This is due to the fact that arbitration law in Montana has changed little in the ast one hundred years.

At common law arbitration was viewed with much disfavor by the courts. The courts believed that they should not be ousted of their traditional role in dispute settlement by private tribunals, nor should parties to a contract be deprived of access to the courts. As a consequence, arbitration clauses were almost universally held to be void and unenforceable. *Palmer Steel Structures v. Westech, Inc.*, 35 S.Rept. 1354, 1358(B) dissenting opinion (1979) *School Dist. No. 1 v. Globe and Republic Ins. Co.*, 146 Mont. 208, 212 (1965). See Note, *Contract Clause Providing For Arbitration Of Future Disputes Is Not Enforceable In Montana*, 24 Mont. L. Rev. 77 (1963).

At common law, the courts generally recognized but did not necessarily enforce three distinct types of arbitration clauses:

(1) An agreement to arbitrate a dispute existing at the time the agreement is entered. These provisions were valid and enforceable only after the subject was actually arbitrated, but a party would be denied a court order enforcing the contractual duty to arbitrate.

(2) An agreement to arbitrate a future factual dispute (a factual dispute not in existence at the time of the agreement was entered but which might arise in the future). These provisions were considered valid because the courts were not ousted of their jurisdiction over issues of law.

(3) An agreement to arbitrate any future dispute (fact or law). These agreements were uniformly held to be void and unenforceable because the courts were ousted of their jurisdiction over legal issues and it was believed that the parties should not be deprived of their access to the courts.

II. Arbitration in Montana.

A. Arbitration in commercial disputes.

In 1867 the Montana legislature enacted a statute which upon first reading appears to have reversed the common law bias against arbitration. The statute provides that "persons capable of contracting may submit to arbitration any controversy which might be the subject of a civil action between them . . . . 27-5-101 MCA. Despite the potentially broad reading this statute might be given, the Montana Court, in conformity with jurisdictions with similar legislation, interpreted the statute to provide for judicial enforcement of an arbitration provision only when the dispute is in existence at the time the agreement is entered. *Green v. Wolff*, 140 Mont. 413, 423 (1962). Thus, under the statute, an agreement to arbitrate only an existing dispute is valid and enforceable.[1] In addition to the statute, the Montana Court continued the common law notion that an agreement to arbitrate any future factual dispute was valid and enforceable (category #2 discussed above). Moreover, the Court recognized that an arbitration award under a valid and enforceable arbitration agreement is binding on the parties.[2] See *Palmer Steel Structures v. Westech, Inc., supra*, 35 S. Rept. at 1357.

However, the major obstacle to arbitration remained. The Montana Court continued to follow the common law rationale that an agreement providing for the arbitration of a future dispute involving an issue of law was unenforceable (category #3). *Palmer Steel Structures v. Westech, Inc. supra*, 35 St. Rept. at 1357.

Unlike Montana, many jurisdictions early came to the realization that if an agreement providing for arbitration of existing disputes involving issues of law were enforceable, it would not violate public policy to make enforceable an agreement to arbitrate a future dispute involving an issue of law. These courts realized that even if the award of an arbitrator were to be based on an issue of law, the award was not enforceable until a court, with an opportunity to review the legal rationale, enforced the award. *See Ezell v. Rocky Mountain Bean & Elevator Co.*, 76 Colo. 409, 232 Pac. 680 (1925). However, these jurisdictions, unlike Montana, were not faced with a legislative mandate prohibiting the development of arbitration away from its common law limitations.

In 1895 the Montana legislature enacted a statute that codified the existing common law notion that courts cannot be denied their traditional jurisdiction over dispute set-

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tlement by agreements of the parties. *School Dist. No. 1 v. Globe & Republic Ins. Co., supra* 146 Mont. at 212.[3] This 1895 statute has been consistently interpreted by the Montana Court to make unenforceable an agreement to arbitrate future disputes unless the arbitration provision is limited to the determination of solely factual issues. *Palmer Steel Structures v. Westech, Inc., supra,* 35 St. Rept. at 1356-1357.[4]

The Montana Court has indicated that such a narrow conception of arbitration is not truly arbitration but merely judicial recognition of commercial appraisal. *School Dist. No. 1 v. Globe & Republic Ins. Co., supra* 146 Mont. at 213. Thus, what is often referred to as arbitration in Montana is nothing more than legal recognition and enforcement of appraisal agreements in a commercial setting.

B. Arbitration in Labor Disputes.

Frequently a collectively bargained contract between an employer and a union will include a provision for dispute settlement ending in arbitration.[5] In view of the limited scope of arbitration in the commercial setting, the question arises whether the agreed method of labor dispute settlement will fare any better. Because the arbitration machinery in the labor agreement anticipates the resolution of all (factual and legal) future disputes, it could be argued that these arbitration agreements will meet with the same fate as found in commercial contracts. However, this is not the case.

Section 301 of the National Labor Relations Act provides that a suit for violation of a labor contract involving a private sector employer engaged in interstate commerce may be brought in a Federal District Court (with state court concurrent jurisdiction) without regard to the amount in controversy or diversity. 29 USCA 185(a). The great majority of cases brought under § 301 are actions to enforce agreements to arbitrate and actions to enforce (or set aside) arbitration awards rendered. Additionally, under § 301 a federal court can by declaratory relief rule that an employer is not required to arbitrate under the specific contract provisions. Gorman, Robert A., *Basic Text on Labor Law Unionization and Collective Bargaining,* 547 (1976).

Accordingly, if a Montana private sector employer engaged in interstate commerce agrees to the arbitration of labor disputes, federal law provides for the enforcement of the agreement. The federal law, unlike Montana, does not limit arbitration of future disputes to solely the resolution of factual disputes.

If the arbitration clause is included in a labor agreement involving a Montana public employer (not subject to the federal legislation), it also appears that the clause will be enforced without regard to the limitations found in commercial arbitration. The Montana Collective Bargaining For Public Employees Act provides that nothing "prohibits the parties from voluntarily agreeing to submit any and all of the issues to final and binding arbitration," and any "agreement to arbitrate, and the award issued . . . shall be enforceable in the same manner as **is provided in the act for enforcement of collective bargaining agreements.**" (Emphasis added.) 39-31-310 MCA. Thus, the legislature provided for enforcement of public employment arbitration provisions in the same manner as the enforcement of the collective bargaining agreement in which the provision is included. The problem is that the legislature did not (forget to?) include a provision in the Act concerning the enforcement of the collective bargaining agreement.

However, this is not a significant problem. Collective bargaining agreements are universally enforced in the same manner as any other contract.[6] It is not reasonable to assume the Montana legislature intended any other procedure. If the legislature intended that "any and all" arbitration clauses would be enforced as collective bargaining agreements, and collective bargaining agreements are traditionally enforced as any other contract, then the only reasonable conclusion is that the legislature intended arbitration provisions to be fully enforced without the limitations found in commercial law.

The need to treat labor arbitration differently than commercial arbitration has long been recognized. The United States Supreme Court has noted that in the commercial setting arbitration is the substitute for industrial strife. Given this distinction, the Court stated since "arbitration of labor disputes has quite different functions from arbitration under an ordinary commercial agreement, the hostility evinced by courts toward arbitration of commercial agreements has no place here. *United Steelworkers v. Warrior and Gulf Navigation Co.,* 363 U.S. 574, 578 (1960). It appears that the Montana legislature recognized this distinction and clearly intended that public employee labor arbitration be fully enforceable.

While the Montana Court has not spoken directly on this issue, two recent opinions assumed the traditional broader position for labor arbitration. However, the Montana Court, without discussing any conflict, upheld a District Court order requiring the employer to arbitrate what appears to be clearly an issue of law under an arbitration clause requiring the arbitration of **future** disputes, *Butte Teachers Union v. Bd. of Ed.,* 34 St. Rept. 726, 730 (1977). In another case, the Court assumed that if the grievance came within the grievance procedure the union could compel the employer to arbitrate the quasi-legal question of "just cause" as required by the contract grievance procedure, *Wibaux Education Association v. Wibaux County High School,* 35 St. Rept. 93 (1978). Moreover, if the Court were to directly speak on the issue, should certainly place much weight on the expressed legislative intent, especially in light of the universally recognized distinction between labor and commercial arbitration.

Accordingly, with labor arbitration provisions involving a Montana employer engaged in interstate commerce fully enforceable under federal law, and such provisions involving a Montana public employer enforceable under the Montana Public Employee Bargaining Act, the vast majority of labor arbitration provisions will be enforceable without regard to the limitations applied to commercial arbitration. For those few Montana solely intrastate employers who have a labor agreement providing for arbitration, it can be argued that the arbitration provi-

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sion should be fully enforceable without regard to the limitations imposed on commercial arbitration, based upon the universally recognized distinction between labor and commercial arbitration. However, given the fact that Montana, unlike most jurisdictions, has a specific statutory limitation on arbitration, this argument might very well be rejected. *See Smith v. Zepp, supra* 34 St. Rept. 753, 761 (1977). Thus, an arbitration agreement involving a solely intrastate private employer might very well be subject to the limitations found in commercial arbitration while no such limitation would be applied to a similar agreement involving an interstate or public employer.

III. Comparison Between the Uniform Arbitration Act and Montana Law.

A summary analysis of the Uniform Arbitration Act and a comparison with current Montana law can conveniently be presented under three headings: (1) which agreements to arbitrate would the model act apply; (2) the judicial procedure applicable in the enforcement of arbitration agreements and arbitration awards; and (3) the hearing procedure used by arbitrators.

1. Agreements Covered.

As previously discussed, current Montana law provides that agreements to arbitrate future disputes involving legal issues are unenforceable. The Model Act eliminates this limitation. The Model Act provides for the enforcement of a written agreement to submit any existing controversy, or a written contract provision to submit any controversy thereafter arising between the parties regardless whether the issue is legal or factual. Uniform Arbitration Act §1. (Hereafter cited as U.A.A.)[11] The Model Act also specifically applies to labor arbitration agreements, unless the parties specify otherwise. The equal treatment for both commercial and labor arbitration under the Model Act eliminates the present confusion in Montana law on this subject. See U.A.A. § 31.

2. Enforcement Procedure.

The Model Act provides that upon motion to the court (a court of competent jurisdiction in the state, e.g., a Montana District Court), a party may seek an order directing arbitration. The order must be granted if the court finds that there is an agreement to arbitrate covering the dispute in question and that the opposing party refuses to arbitrate. U.A.A. § 2(a). In the event there is an action or proceeding involving the issue pending before the court, the court must stay that action or proceeding, or sever the arbitrable issue from that action or proceeding. U.A.A. § 2(c) and (d). The purpose of staying the action or proceeding or severing the arbitrable issue from the action or proceeding is to prevent the court from preempting the arbitration process. The Model Act also provides that a court may not refuse an order for arbitration because the court believes the issue lacks merit. U.A.A. § 2(e). Whether the party seeking arbitration raises a meritorious issue is to be left to the decision of the arbitrator and the arbitration process must not be preempted by the court. Thus, when a party seeks a court order enforcing an arbitration provision, the court need only concern itself with whether there is a valid arbitration agreement and whether the agreement covers the dispute in question. Whether the issue raised has merit is left to the arbitrator. Current Montana law is in substantial agreement with these provisions of the Model Act.[8]

The other major area of judicial intervention concerns the enforcement of the award. The Model Act follows the traditional motions to confirm, vacate, correct or modify the award of the arbitrator. U.A.A. §§ 11, 12, 13. This corresponds to the method used in Montana. Compare MCA §§27-5-203 through 27-5-302 with §§ 11, 12 and 13 of the Model Act.[9]

The Model Act provides that the court shall vacate an award on five separate grounds.[10] The Montana statute provides that a court may vacate an award under similar circumstances. Compare 27-5-301 MCA with U.A.A. § 12. Other than the compulsory language in the Model Act requiring the Court to vacate and the permissive language of the Montana Act, there is little substantive difference between the two provisions.[11] Moreover, the Montana Court has recognized that its scope of review under common law arbitration is narrow, and its authority to vacate an award is limited to situations similar to those set forth in the Montana statute and the Model Act. *McIntosh et al. v. Hartford Fire Ins. Co.*, 106 Mont. 434, 439-440 (1930). *See also Lee v. Providence Washington Ins. Co.*, 82 Mont. 264, 274-275 (1928); *Clifton Applegate - Toole v. Drain Dist. No. 1*, 82 Mont. 312, 328-9 (1928). Accordingly, the Model Act does not represent a sharp departure from current Montana law on this subject.[12]

3. Arbitration Hearings.

Dean Pirsig, the leading draftsman of the Model Act, has indicated that the goal of the arbitration hearing procedure in the Model Act "was to safeguard the essentials of a fair hearing without detracting from the informality, the freedom from technicality, and the dispatch which characterize arbitration hearings and which are commonly important reasons why the parties have agreed to resort to arbitration," Pirsig, *supra* note 12 at 118. The hearing procedure set forth in the Model Act meets this important goal. While, in comparison with the Montana Act, the Model Act specifically provides for more procedural options [13] and procedural safeguards,[14] these provisions are not inconsistent with the Montana Act or the decisions of the Montana Court. The Model Act merely goes further to assure that the arbitration process will be workable and fair.

IV. Conclusion.

Twenty two states and the District of Columbia have adopted the Model Act. Most other states have statutes similar to the Model Act or judicial decisions affording full use of the arbitration process as a method of private dispute settlement. Given the present Montana statutory framework that locks in the out of date, universally rejected common law view of arbitration, the Montana legislature must act if Montana is to have a truly effective method of extrajudicial dispute settlement. The Montana Court has similarly recognized that although "arbitration may be the most speedy and economical means available to parties for a binding resolution of their disputes," full utilization of this method cannot be made until the legislature acts. *Smith v. Zepp, supra* 34 St. Rept. 761. In an era of

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ARBITRATION

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crowded dockets and lengthy and expensive litigation, methods supporting private settlement of disputes should be encouraged. The Model Act or some tailored form of the Model Act is the best method to achieve this goal.

William L. Corbett

Mr. Corbett received his B.S. from the University of Wyoming, in 1967, his J.D. from the University of Wyoming in 1970, his LL.M. from Harvard University, in 1971. He was Attorney, Appellate Court Div., Office of the General Council, National Labor Relations Board, from 1971 to 1974.

FOOTNOTES

Fourteen footnotes, which include complete citations as well as explanatory material, accompany this article. Because of space limitations, the text of these footnotes has been deleted. However, copies of the text of the footnotes are available upon request from the writer or the Montana Bar, and the footnote numbers have been left in the text of the article for the convenience of those who wish to make such a request.

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one-year "observer" apprenticeship, each candidate is placed on a panel of judges, but there the President of the panel reigns supreme. If Mr. President wants an opinion from a panel member, he will ask for it. It is that simple. Not until the candidate has himself been assigned as a President will he really be an active judge, and that time depends upon future vacancies and the academic standards of the candidate. The appointments are for life. They carry great social prestige and command the highest incomes in the profession. Ironically, the production of such high calibre public servants has lead to numerous physical attacks and assassinations. The underworld has learned that these persons cannot be intimidated, swayed or bought so it is resorting to terrorism to try to achieve it's goals. Strangely enough, the profession considers this a high compliment and is prepared to stand firm.

February 1981

CLE AT HARVARD

Harvard Law School will hold its Thirteenth Session of the Program of Instruction for Lawyers (PIL), July 13-25, 1981. The Program is directed by Louis Loss, the William Nelson Cromwell Professor of Law.

Recognizing the need for innovative, up-to-date continuing legal education programs, Harvard Law School has put together a 34-course Program, taught by 30 members of the Law School Faculty, which is designed to inform the participants of the latest developments in numerous areas of the law. Among the courses in the 1981 Program are Antitrust Law, Banking Regulation, Health Care Regulation, Local Govenment Law, Securities Regulation, Accounting for Lawyers, Bankruptcy: The New Law, The Press and the Law, Negotiation: Theory and Practice and Psychiatry for Lawyers, as well as five tax courses. The 1980 Program included lawyers from 22 foreign countries, 95 government lawyers, 30 judges (including 16 federal judges sponsored by the Federal Judicial Center), 29 full-time law school teachers and 20 public interest lawyers.

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FOOTNOTES
for
Arbitration in Montana and the Need for New Legislation
by William L. Corbett

[1] The statute did have the positive effect of eliminating the common law obstacle to existing dispute arbitration mentioned in category #1 discussed above.

[2] A party could, of course, receive judicial review of the award and upon an appropriate showing have the award vacated, corrected or modified. This will be discussed infra. pp. 9-10.

[3] The statute provides: "Every stipulation or condition in a contract by which any party thereto is restricted from enforcing his rights under the contract, by the usual proceedings in ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void. 28-2-702 MCA.

[4] The Montana Court has held that a provision requiring the arbitration of a future dispute involving an issue of "value or quality" is valid and enforceable. However, the court has consistently held that an arbitration award in a dispute involving an issue of "value or quantity" must be based solely on a question of fact, and that once the arbitrator relies on the "intent and meaning" of the contract in reaching his decision, he is involved in an issue of law and the award is void and unenforceable. State ex rel. Cave Co. v. Dist. Ct., supra 150 Mont. at 22, Palmer Steel Structures v. Westech, Inc., supra, 35 St. Rept. 1356-1357.

[5] Most frequently the contract will provide for a grievance procedure which establishes an agreed method of dispute settlement. Often the grievance procedure will provide that unresolved grievances are to be submitted to arbitration, e.g. "grievance arbitration." A second method of arbitration occasionally provided for in a collective agreement calls for arbitration in the event the parties are unable to reach agreement on the specific provisions to be included in a subsequent contract. This method of labor dispute settlement is referred to as "interest arbitration."

[6] The National Labor Relations Act after which most state public employment acts are patterned, including the Montana Act, provides for judicial enforcement of collective bargaining agreements in a manner not unlike the enforcement of any other contract. 27 USCA 185(a).

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7. The Montana statute which provides for the enforcement of agreements to arbitrate existing disputes specifically exempts disputes involving title to real property, §27-5-101 MCA. The Model Act has no such exemption.

8 The Montana statute that authorizes arbitration on matters currently in dispute provides that the parties may stipulate that their agreement to arbitrate may be entered as an order of the district court, § 27-5-104. For arbitration awards not covered by the statute but authorized by common law, the Montana Court will enter an order enforcing a contract duty to arbitrate. School Dist. No. 1 v. Globe and Republic Ins. Co., supra 146 Mont. at 212-213. Where a party seeks to litigate an issue subject to arbitration, the Court had held that the action or proceeding must give way to the agreed upon arbitration settlement procedure. Id. Additionally, the Court has recognized that under a valid arbitration agreement, it is the function of the arbitrator, not the court, to evaluate the issue in dispute. Id.

9 The Model Act does, however, integrate these motions. Thus, on motion to confirm the award, any grounds for vacating, correcting or modifying the award must be asserted by opposing party. U.A.A. § 13. Similarly, upon an unsuccessful motion to vacate, correct or modify, the Court will confirm the award. U.A.A. § 5 12(d) and 13(b).

10 (1) the award was procured by corruption, fraud or other undue means;
(2) there was evident partiality by the arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;
(3) the arbitrators exceeded their powers;
(4) the arbitrators refused to postpone the hearing upon sufficient cause being shown therefor, or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of . . . (the Act concerning the hearing procedure), as to prejudice substantially the rights of a party; or
(5) there was no arbitration agreement and the issue was not adversely determined in proceedings under . . . . (the provisions of the Act concerning judicial enforcement of the duty to arbitrate) and the party did not participate in the arbitration hearing without raising the objection. U.A.A. § 12.

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11 There are, however, differences, e.g., Montana provides that the Court may vacate an award if it is indefinite or cannot be performed, while it does not provide for vacating an award where the arbitrator was in fact not neutral. See 27-5-301 MCA.

12 The Model Act does provide that a Court may not vacate or refuse to confirm an award because the relief granted was such that could not be granted by a court of law or equity. U.A.A. § 12(a). The leading draftsman of the Model Act has indicated that the necessity for this provision is based on situations where corporate stock is evenly held by stockholders who cannot agree on a question of corporate policy. "It is an increasingly frequent practice to submit such disputes to arbitration and avoid dissolution." Pirsig, Maynard E., Toward a Uniform Arbitration Act. 9 Arb. Journal 115, 118 (1954). Of course, there is no applicable treatment under Montana common law, Montana will not even enforce arbitration awards involving legal issues.

13 The Court may appoint the arbitrator or arbitrators in the absence of an agreement between the parties, or if the agreed method fails, U.A.A. § 33; arbitrators may subpeona witnesses, records, etc. with court enforcement, and take depositions, U.A.A. § 37.

14 In the absence of an agreement to the contrary, and upon application by a party, the Court may fix the period of time after the hearing for the award, U.A.A. § 8(b); final awards are to be based on majority vote of arbitrators, U.A.A. § 5(c).

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(This sheet to be used by those testifying on a bill.)

NAME: William Jordan DATE: 1/21/85

ADDRESS: Box 5004, Great Falls, MT 59401

PHONE: 761-7310

REPRESENTING WHOM? Blue Cross/Blue Shield

APPEARING ON WHICH PROPOSAL: SB 63, 110

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENT:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
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DATE 012185
BILL NO. SB 63+110

(This sheet to be used by those testifying on a bill.)

NAME: SCOTT J. BURNHAM DATE: 1/21/85

ADDRESS: UNIVERSITY OF MONTANA SCHOOL OF LAW, MISSOULA MT 5981

PHONE: 243-6603

REPRESENTING WHOM? SELF

APPEARING ON WHICH PROPOSAL: 63, 110

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENT:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 19
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BILL NO. SB 63+110

Re: SB 63 and SB 110

Scott J. Burnham
Associate Professor of Law
University of Montana School of Law

Personal Background

I teach Contracts Law, emphasizing the importance of preventive law and dispute resolution; that is, using the court system as a last resort for resolving disputes.

I have worked as an Administrative Law Judge for the City of New York, resolving disputes for the Board of Education and the Taxi Commission. I have recently been retained by the Better Business Bureau to coordinate arbitration hearings in Montana between automobile manufacturers and consumers.

Position

MCA § 28-2-708 should be repealed insofar as it makes agreements to arbitrate future disputes unenforceable; the Uniform Arbitration Act should be enacted.

Historical Background

The statute is a carryover from common-law England, where agreements to arbitrate were not respected. If breached, there were only nominal damages. It became fashionable to say that they were against public policy because they "oust the jurisdiction of the courts." Some say the real explanation is that courts wanted the cases because judge's salaries were paid from the court fees.

In America, the view that disputes should be resolved in court was especially popular in sparsely populated states such as Montana, where access to courts was readily available.

The Present Situation

The view that courts jealously guard their jurisdiction, if ever true, is no longer true in an era of complex litigation and crowded court calendars. The Montana Supreme Court, in enforcing 28-2-708 has repeatedly said that it would like to enforce the agreement to arbitrate but its hands were tied by the legislature.

In fact, most disputes today are resolved outside of courts. It is said that 70% are resolved by some form of alternate dispute resolution.

Furthermore, the scope of anti-arbitration statutes such as 28-2-708 has been substantially reduced. Judicial decisions have allowed present disputes and disputes of fact to be arbitrated. States allow alternate resolution of many disputes, such as medical malpractice claims in Montana. Federal statutes in many areas, including labor and consumer issues, require arbitration. And the United States Supreme Court has recently held that the federal arbitration act pre-empts state anti-arbitration laws in transactions involving interstate commerce.

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Consumer Protection

Arbitration will benefit the average Montanan as a "consumer" when involved in disputes. The advantages of arbitration over court resolution of disputes include speed, economy, simplified procedures, and the opportunity to pursue small claims that might otherwise be abandoned. In the commercial context, experts in the trade or business can be used to arbitrate disputes. It is probably also fair to say that the procedure is less polarizing, which can be important where the parties must continue to interact with each other. Arbitaration can also assist where the parties are unequal and the "little guy" could be smothered by the expense of litigation.

A concern has been raised that the little guy might suffer when arbitration is included in a "contract of adhesion," that is, a printed contract that the consumer is not able to bargain for. I do not agree. Adhesion clauses are suspect when they limit the obligations or the liabilities of the stronger party, or when they are contrary to reasonable expectations. Because of the advantages of arbitration expressed above, I believe the consumer will not lose out when such clauses are included as long as they provide for a fair arbitration, such as use of the American Arbitration Association.

In the area of Uninsured Motorist Coverage in automobile insurance policies, for example, I find the advantages of arbitration outweigh the disadvantages, with one exception. States that allow arbitration under this clause have experienced a tremendous volume of litigation on the question of what issues are arbitrable. The result is exactly what arbitration should prevent. For this reason, the legislature should either exempt this coverage or make clear that all issues are arbitrable under these policies.

Conclusion

The trend toward settlement of claims outside the court system should be encouraged. It must be remembered that 28-2-708 restricts freedom of contract. Repealing the statute would simply give people the option to choose arbitration. In the absence of their free choice of arbitration, the court system remains open to them. Freedom of choice is thereby furthered by repeal.

Should the parties choose arbitration, present Montana statutes govern how it works. However, the Uniform Act, which has been adopted in the majority of states, provides more thorough guidance and should be adopted.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 19
DATE 01/28/85
BILL NO. SB 63 + 110

Montana Trial Lawyers Association

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Governor:
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Executive Director:
Carol Harrison

Proposed Amendment to Senate Bill 110, Uniform Arbitration Act

Page 2, Line 5: Delete "." after "contract" and add the following: "provided, however, that an arbitration provision in a written contract to which all parties to the contract have not agreed with full knowledge of the effects of that arbitration provision is not valid, enforceable and irrevocable."

OR

Page 2, Line 2: After "contract" add the following: "to which all parties have agreed with full knowledge of the provisions contained therein"

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 20
DATE 01-21-85
BILL NO. SB 110

(This sheet to be used by those testifying on a bill.)

NAME: Terrence D Cannady DATE: _____

ADDRESS: 910 Helena Ave, Helena, MT.

PHONE: 443-4032

REPRESENTING WHOM? Mont Assn of REALTORS

APPEARING ON WHICH PROPOSAL: SB-63 & [redacted] 110

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENT: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 21
DATE 012185
BILL NO. SB 63 + 110

(This sheet to be used by those testifying on a bill.)

NAME: Riley Johnson DATE: 1-21-85

ADDRESS: 491 So. Park Ave

PHONE: 442-6424

REPRESENTING WHOM? Montana Homebuilders Ass'n.

APPEARING ON WHICH PROPOSAL: 110

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENT: Saves time, money and lets us get the job completed. But need model code adopted.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 22
DATE 012185
BILL NO. SB 110

24

JAN 21

MONTANA ARBITRATORS ASSOCIATION

January 19, 1985

Senator Joe Mazurek, Chair
Judiciary Committee
Montana Senate
Helena, Montana 59620

Dear Senator Mazurek:

I am sorry that I will not be able to be in Helena to testify in favor of SB 110 and would appreciate it if you will read this letter to the members of the committee.

The Montana Arbitrators Association is an organization composed of both neutral arbitrators and advocates. We encourage the resolution of contractual disputes through the use of arbitration. The arbitration process can provide quick and equitable solutions to problems contracting parties have not been able to solve. We believe the process can be enhanced by the passage of SB 110.

Contracting parties find arbitration desirable because it is faster than the court system, it can provide an equitable solution to a specific problem and it is considerably cheaper than a breach of contract action in the courts.

Legislatures and courts throughout the country are increasingly looking upon arbitration as a process which, if used, can put the brakes on the increasing cost of the court system.

There are several flaws in the arbitration system as it exists in Montana today. SB 110, The Uniform Arbitration Act, would cure these flaws and allow the system to operate in the most optimum manner. I will mention only one of these flaws and leave those testifying to discuss others. Presently, arbitration awards are not enforceable in court. An arbitrating party which does not like an award can refuse to abide by it. Fortunately, most parties act in good faith and the situation does not occur. However, the whole system is undermined everytime a party refuses to abide by an arbitrator's award. Awards should be enforceable in court. Sections 14 and 15 of SB 110 address the problem. Section 14 makes arbitration awards enforceable in court and Section 15 protects arbitrating parties from fraud, corruption and misconduct by arbitrators.

A voluntary arbitration system can take pressure off the court system, it is cheaper for parties engaged in the process and it can cut costs for the taxpayers. We urge the passage of SB 110.

Sincerely,

Kenneth D. Bryson

Kenneth D. Bryson
President

SENATE JUDICIARY COMMI
EXHIBIT NO. 24
DATE 012185
BILL NO. SB. 110

The Montana Arbitrators Association is a non-profit service organization which promotes dispute resolution through mediation, factfinding, and arbitration

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ROLL CALL

SENATE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985 Date 01/29/85

NAME	PRESENT	ABSENT	EXCUSED
Senator Chet Blaylock	X		
Senator Bob Brown	X		
Senator Bruce D. Crippen	X		
Senator Jack Galt	X		
Senator R. J. "Dick" Pinsoneault	X		
Senator James Shaw	X		
Senator Thomas E. Towe	X		
Senator William P. Yellowtail, Jr.	X		
Vice Chairman Senator M. K. "Kermit" Daniels	X		
Chairman Senator Joe Mazurek	X		

MONTANA STATE SENATE

JUDICIARY COMMITTEE

- -

49th Legislature - 1985

- -

COMMITTEE MEMBERS: Senator Joe Mazurek, Chairman
Senator Kermit Daniels, Vice Chairman
Senator Chet Blaylock
Senator Bob Brown
Senator Bruce Crippen
Senator Jack Galt
Senator Dick Pinsoneault
Senator Jim Shaw
Senator Tom Towe
Senator Bill Yellowtail

STAFF ATTORNEY: Greg Petesch

COMMITTEE SECRETARY: Cindy Staley

- -

BOOK: 1 of 4

INCLUSIVE DATES: January 8, 1985 - January 31, 1985

CHAIRMAN--MAZUREK, JOE
SECRETARY-STALEY, CINDY
NORMAL SCHEDULE==> SITE: OLD SUPREME COURT ROOM DAYS: M-TU-W-TH-F TIME: 10:00 A.M.-12 NOON

BILL NO	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
SB0104	1/14	1/28	1/28	PASS AS AMENDED		1/29
HALLIGAN, MIKE			COMPUTERIZED JURY SELECTION			
SB0105	1/14	1/24		PASS AS AMENDED		1/25
REGAN, PAT			HEALTH INSURANCE COVERAGE IN CHILD SUPPORT ORDERS			
SB0110	1/15	1/21	1/22 1/29 2/06	PASS AS AMENDED		2/6
MAZUREK, JOSEPH P.			ADOPT UNIFORM ARBITRATION ACT			
SB0119	1/16	1/24		PASS AS AMENDED		1/28
ECK, DOROTHY			FEE FOR CHILD SUPPPORT ENFORCEMENT SERVICES TO BE PAID BY NON-SUPPORTER			
SB0125	1/16		2/23	TABLED without hearing		1/25
MCCALLUM, GEORGE			TESTING FOR DRUG USE IN DUI CASES			
SB0128	1/18	2/08	2/23	TABLED		2/11
HIMSL, MATT			REPLACING THE MECHANICS' LIEN LAWS WITH THE UNIFORM CONSTRUCTION LIEN LAW			
SB0132	1/18	1/25		PASS AS AMENDED		1/28
HALLIGAN, MIKE			DIVIDE AGGRAVATED ASSAULT INTO FIRST AND SECOND DEGREE OFFENSES			
SB0144	1/18	1/28		DO PASS		1/28
MAZUREK, JOSEPH P.			INCREASING SUPREME COURT FILING FEES			
SB0148	1/18	2/01		ADVERSE REPORT		2/4
BROWN, BOB			ADDITIONAL SENTENCE IF OFFENSE IS COMMITTED WITH ANY WEAPON			
SB0149	1/18	2/01		ADVERSE REPORT		2/4
BROWN, BOB			GUILTY PLEA IN LOWER COURT WAIVES RIGHT TO APPEAL TO DISTRICT COURT			
SB0150	1/18	2/01	XXXX 2/23	TABLED		2/4
BROWN, BOB			ABOLISH SUPREME COURT SENTENCE REVIEW DIVISION			

SENATE BILL NO. 110

INTRODUCED BY MAZUREK, HALLIGAN

A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING THE UNIFORM ARBITRATION ACT AND CONFORMING OTHER STATUTORY PROVISIONS THERETO; PROVIDING FOR APPLICABILITY TO ~~LABOR~~ CERTAIN AGREEMENTS; AMENDING SECTIONS 2-18-621, 27-1-412, 28-2-708, AND 71-3-801, MCA; AND REPEALING SECTIONS 27-5-101 THROUGH 27-5-105, 27-5-201 THROUGH 27-5-203, AND 27-5-301 THROUGH 27-5-304, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1 through 21] may be cited as the "Uniform Arbitration Act".

NEW SECTION. Section 2. Uniformity of interpretation. [Sections 1 through 21] must be construed to effectuate [their] general purpose to make uniform the law of those states that enact [them].

NEW SECTION. Section 3. Application to labor agreements. [Sections 1 through 21] apply to arbitration agreements between employers and employees or between their respective representatives unless otherwise provided in the agreement.

NEW SECTION. Section 4. Validity of arbitration agreement -- EXCEPTIONS. (1) A written agreement to submit an existing controversy to arbitration ~~or a provision in a written contract to submit to arbitration any controversy arising between the parties after the contract is made~~ is valid, AND enforceable, ~~and irrevocable~~ except upon such grounds as exist at law or in equity for the revocation of a contract.

(2) EXCEPT AS PROVIDED IN SUBSECTION (3), A WRITTEN AGREEMENT TO SUBMIT TO ARBITRATION ANY CONTROVERSY ARISING BETWEEN THE PARTIES AFTER THE CONTRACT IS MADE IS VALID AND ENFORCEABLE EXCEPT UPON SUCH GROUNDS AS EXIST AT LAW OR IN EQUITY FOR THE REVOCATION OF A CONTRACT. THIS SUBSECTION DOES NOT APPLY TO:

(A) CLAIMS ARISING OUT OF PERSONAL INJURY, BASED ON CONTRACT, OR TORT;

(B) ANY AGREEMENT CONCERNING OR RELATING TO INSURANCE POLICIES OR ANNUITY CONTRACTS EXCEPT FOR THOSE CONTRACTS BETWEEN INSURANCE COMPANIES;

(C) ANY AGREEMENT WHICH HAS NOT BEEN CONCLUDED UPON THE ADVICE OF COUNSEL TO ALL PARTIES AS EVIDENCED BY COUNSEL'S SIGNATURE THERETO;

(D) CLAIMS FOR WORKERS' COMPENSATION; AND

(E) ARBITRATION AGREEMENTS BETWEEN EMPLOYERS AND EMPLOYEES OR THEIR RESPECTIVE REPRESENTATIVES UNLESS THE AGREEMENT PROVIDES THAT [THIS ACT] APPLIES.

(3) THE PROHIBITIONS AND REQUIREMENTS OF SUBSECTION

(2) DO NOT APPLY TO OR AFFECT THE VALIDITY OF ARBITRATION AGREEMENTS UNDER A MEMBERSHIP CONTRACT AS DEFINED IN 33-30-101(3) CONCERNING ONLY QUESTIONS OF MEDICAL NECESSITY, EXPERIMENTAL TREATMENT, OR WHETHER THE INJURY OR ILLNESS IS A PREEXISTING CONDITION.

(4) NOTICE THAT A CONTRACT IS SUBJECT TO ARBITRATION PURSUANT TO [THIS ACT] SHALL BE TYPED IN UNDERLINED CAPITAL LETTERS ON THE FIRST PAGE OF THE CONTRACT; AND UNLESS SUCH NOTICE IS DISPLAYED THEREON, THE CONTRACT MAY NOT BE SUBJECT TO ARBITRATION.

NEW SECTION. Section 5. Proceedings to compel or stay arbitration. (1) On the application of a party showing an agreement described in [section 4] and the opposing party's refusal to arbitrate, the district court shall order the parties to proceed with arbitration; but if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of that issue raised and shall order arbitration if it finds for the applying party or deny the application if it finds for the opposing party.

(2) On application, the district court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. Such an issue, when in substantial and bona fide dispute, shall be immediately and summarily tried and the stay ordered if the

court finds for the applying party. If the court finds for the opposing party, it shall order the parties to proceed to arbitration.

(3) If an issue referable to arbitration under the alleged agreement is involved in an action or proceeding pending in a court having jurisdiction to hear applications under subsection (1), the application must be made in that court. Otherwise, and subject to [section 20], the application may be made in any court of competent jurisdiction.

(4) An action or proceeding involving an issue subject to arbitration must be stayed if an order or application for arbitration has been made under this section. If an issue is severable, the stay may be with respect to the severable issue only. When the application is made in such action or proceeding, the order for arbitration shall include such stay.

(5) An order for arbitration may not be refused on the ground that the claim in issue lacks merit or good faith or because no fault or grounds for the claim sought to be arbitrated have been shown.

NEW SECTION. Section 6. Appointment of arbitrators. If the arbitration agreement provides a method of appointment of arbitrators, this method shall be followed. If no method is provided, the agreed method fails or for any

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reason cannot be followed, or an appointed arbitrator fails or is unable to act and his successor has not been duly appointed, the district court on application of a party shall appoint one or more arbitrators. An arbitrator so appointed has all the powers of one specifically named in the agreement.

NEW SECTION. Section 7. Majority action by arbitrators. The powers of the arbitrators may be exercised by a majority unless otherwise provided by the agreement or by [sections 1 through 21].

NEW SECTION. Section 8. Hearing. Unless otherwise provided by the agreement, the following apply:

(1) The arbitrators shall appoint a time and place for the hearing and cause notification to the parties to be served personally or by certified mail not less than 5 days before the hearing. Appearance at the hearing waives such notice. The arbitrators may adjourn the hearing from time to time as necessary and, on request of a party and for good cause or upon their own motion, may postpone the hearing to a time not later than the date fixed by the agreement for making the award unless the parties consent to a later date. The arbitrators may hear and determine the controversy upon the evidence produced, notwithstanding the failure of a party duly notified to appear. The district court on application may direct the arbitrators to proceed promptly

with the hearing and determination of the controversy.

(2) The parties are entitled to be heard, present evidence material to the controversy, and cross-examine witnesses appearing at the hearing.

(3) The hearing must be conducted by all the arbitrators, but a majority may determine any question and render a final award. If during the course of the hearing an arbitrator for any reason ceases to act, the remaining arbitrator or arbitrators appointed to act as neutrals may continue with the hearing and determination of the controversy.

NEW SECTION. Section 9. Representation by attorney. A party has the right to be represented by an attorney at any proceeding or hearing under [sections 1 through 21]. A waiver of this right prior to the proceeding or hearing is ineffective.

NEW SECTION. Section 10. Witnesses, subpoenas, and depositions. (1) The arbitrators may issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence and may administer oaths. Subpoenas so issued must be served and, upon application to the district court by a party or the arbitrators, enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action in district court.

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(2) On the application of a party and for use as evidence, the arbitrators may permit a deposition to be taken, in the manner and upon the terms designated by the arbitrators, of a witness who cannot be subpoenaed or is unable to attend the hearing.

(3) All provisions of law compelling a person under subpoena to testify are applicable to persons subpoenaed under [sections 1 through 21].

(4) Fees for attendance as a witness are the same as for a witness in the district court.

NEW SECTION. Section 11. Award. (1) The award must in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy to each party personally by certified mail or as provided in the agreement.

(2) An award must be made within the time fixed by the agreement or, if no time is fixed, within such time as the district court orders on application of a party. The parties may extend the time, in writing, either before or after the expiration thereof. A party waives the objection that an award was not made within the time required unless he notifies the arbitrators of his objection prior to the delivery of the award to him.

NEW SECTION. Section 12. Change of award by arbitrators. On the application of a party or, if an

application to the court is pending under [section 14, 15, or 16], on submission to the arbitrators by the court under such conditions as the court may order, the arbitrators may modify or correct the award upon the grounds stated in [subsections (1)(a) and (1)(c) of section 16] or for the purpose of clarifying the award. The application must be made within 20 days after delivery of the award to the applicant. Written notice thereof shall be given immediately to the opposing party, stating that he must serve his objections thereto, if any, within 10 days from the notice. A modified or corrected award is subject to the provisions of [sections 14, 15, and 16].

NEW SECTION. Section 13. Fees and expenses of arbitration. Unless otherwise provided in the agreement to arbitrate, the arbitrators' expenses and fees, together with other expenses, not including counsel fees, incurred in the conduct of the arbitration, must be paid as provided in the award.

NEW SECTION. Section 14. Confirmation of award by court. Upon the application of a party, the district court shall confirm an award unless within the time limits imposed in [sections 1 through 21] grounds are urged for vacating, modifying, or correcting the award, in which case the court shall proceed as provided in [sections 15 and 16].

NEW SECTION. Section 15. Vacating an award. (1) Upon

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the application of a party, the district court shall vacate an award if:

(a) the award was procured by corruption, fraud, or other undue means;

(b) there was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;

(c) the arbitrators exceeded their powers;

(d) the arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of [section 8], as to prejudice substantially the rights of a party; or

(e) there was no arbitration agreement and the issue was not adversely determined in proceedings under [section 5] and the party did not participate in the arbitration hearing without raising the objection.

(2) The fact that the relief was such that it could not or would not be granted by a court of law or equity is not grounds for vacating or refusing to confirm the award.

(3) An application under this section must be made within 90 days after delivery of a copy of the award to the applicant, except that if it is predicated upon corruption,

fraud, or other undue means, it must be made within 90 days after such grounds are known or should have been known.

(4) In vacating the award on grounds other than those stated in subsection (1)(e), the court may order a rehearing before new arbitrators chosen as provided in the agreement or, if the agreement does not provide a method of selection, by the court in accordance with [section 6] or, if the award is vacated on grounds set forth in subsection (1)(c) or (1)(d), the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with [section 6]. The time within which the agreement requires the award to be made is applicable to the rehearing and commences on the date of the order for rehearing.

(5) If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award.

NEW SECTION. Section 16. Modification or correction of award by court. (1) Upon application made within 90 days after delivery of a copy of the award to the applicant, the district court shall modify or correct the award if:

(a) there was an evident miscalculation of figures or an evident mistake in the description of any person, thing, or property referred to in the award;

(b) the arbitrators awarded upon a matter not

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submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or

(c) the award is imperfect in a matter of form not affecting the merits of the controversy.

(2) If the application is granted, the court shall modify and correct the award to effect its intent and shall confirm the award as modified and corrected. Otherwise, the court shall confirm the award as made.

(3) An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

NEW SECTION. Section 17. Judgment on award -- costs. (1) Upon the granting of an order confirming, modifying, or correcting an award, judgment must be entered in conformity with the order and be enforced as any other judgment. Costs of the application and of the proceedings subsequent thereto and disbursements may be awarded by the court.

(2) The judgment may be docketed as if rendered in an action.

NEW SECTION. Section 18. Applications to court -- how made. Except as otherwise provided, an application to the court under [sections 1 through 21] must be by motion and must be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions.

Unless the parties have agreed otherwise, notice of an initial application for an order must be served in the manner provided by law for the service of a summons in an action.

NEW SECTION. Section 19. Jurisdiction of district court. The making of an agreement described in [section 4] providing for arbitration in this state confers jurisdiction on the district court to enforce the agreement under [sections 1 through 21] and to enter judgment on an award under the agreement.

NEW SECTION. Section 20. Venue. An initial application must be made to the court of the county in which the agreement provides the arbitration hearing must be held or, if the hearing has been held, in the county in which it was held. Otherwise, the application must be made in the county where the adverse party resides or has a place of business or, if he has no residence or place of business in this state, to the court of any county. All subsequent applications must be made to the court hearing the initial application unless the court otherwise directs. NO AGREEMENT CONCERNING VENUE INVOLVING A RESIDENT OF THIS STATE IS VALID UNLESS THE AGREEMENT REQUIRES THAT ARBITRATION OCCUR WITHIN THE STATE OF MONTANA. THIS REQUIREMENT MAY ONLY BE WAIVED UPON THE ADVICE OF COUNSEL AS EVIDENCED BY COUNSEL'S SIGNATURE THERETO.

NEW SECTION. Section 21. Appeals. (1) An appeal may be taken from:

(a) an order denying an application to compel arbitration made under [section 5];

(b) an order granting an application to stay arbitration made under [section 5(2)];

(c) an order confirming or denying confirmation of an award;

(d) an order modifying or correcting an award;

(e) an order vacating an award without directing a rehearing; or

(f) a judgment entered pursuant to the provisions of [sections 1 through 21].

(2) The appeal must be taken in the manner and to the same extent as from orders or judgments in a civil action in district court.

Section 22. Section 2-18-621, MCA, is amended to read:

"2-18-621. Unlawful termination. It shall be unlawful for an employer to terminate or separate an employee from his employment in an attempt to circumvent the provisions of 2-18-611, 2-18-612, and 2-18-614. Should a question arise under this section, it shall be submitted to arbitration as provided in ~~Title 27, chapter 5~~ [sections 1 through 21] as if an agreement described in [section 4] is in effect, unless there is a collective bargaining agreement to the

contrary applicable."

Section 23. Section 27-1-412, MCA, is amended to read:

"27-1-412. Obligations which cannot be specifically enforced. The following obligations cannot be specifically enforced:

(1) an obligation to render personal service or to employ another therein;

(2) an agreement to marry or live with another;

~~(3) an agreement to submit a controversy to arbitration;~~

~~(4)~~(3) an agreement to perform an act which the party has not power to perform lawfully when required to do so;

~~(5)~~(4) an agreement to procure the act or consent of the spouse of the contracting party or of any other third person; or

~~(6)~~(5) an agreement the terms of which are not sufficiently certain to make the precise act which is to be done clearly ascertainable."

Section 24. Section 28-2-708, MCA, is amended to read:

"28-2-708. Restraints upon legal proceedings void. Every stipulation or condition in a contract by which any party thereto is restricted from enforcing his rights under the contract by the usual proceedings in the ordinary tribunals or which limits the time within which he may thus enforce his rights is void. This section does not affect the

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validity of an agreement enforceable under [sections 1 through 21]."

Section 25. Section 71-3-801, MCA, is amended to read:

"71-3-801. Who may have lien -- amount. (1) All threshermen or swathers owning or operating threshing or swathing machines and all owners of combine harvesters and threshers shall have a lien upon the grain and other crops swathed or threshed by said threshing or swathing machine or cut and threshed by said combine harvester and thresher for and on account of the services rendered and the labor performed by them on said grain and crops and which lien may be claimed by the owner of said grain for the reasonable value of such services if same are performed by him. Liens on grain and other crops shall be charged for at the prevailing price for that particular locality in which such grain or other crop is threshed, harvested, or combined, provided notices are given and lien is filed within the time provided by this part.

(2) If the prevailing price for threshing, harvesting, or combining grain or other crop is disputed by the thresherman or swather and the owner of the grain or other crop, the matter may be submitted to arbitration under the provisions of ~~chapter 5, Title 27~~ [sections 1 through 21]."

NEW SECTION. Section 26. Application not retroactive. This act applies only to agreements made subsequent to

October 1, 1985.

NEW SECTION. Section 27. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 28. Repealer. Sections 27-5-101 through 27-5-105, 27-5-201 through 27-5-203, and 27-5-301 through 27-5-304, MCA, are repealed.

-End-

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MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

January 29, 1985

The sixteenth meeting of the Senate Judiciary Committee was called to order at 10:06 a.m. on January 29, 1985, by Chairman Joe Mazurek in Room 325 of the Capitol Building.

ROLL CALL: All committee members were present.

CONSIDERATION OF SB 185: Senator Les Hirsch, sponsor of SB 185, introduced the bill to the committee (see written testimony attached as Exhibit 1).

PROPONENTS: Julie Begler, Real Estate Loan Officer at Norwest Bank in Helena and a member of the Montana Bankers Association, presented written testimony in support of the bill and gave a brief example of a typical foreclosure proceeding (Exhibit 2). David Brown, former Chairman of the Montana Bankers Association Real Estate Committee, appeared in support of this bill. He testified that the Small Tract Financing Act which was enacted in 1962 provides an excellent medium for banks to secure their transactions. Trust indentures chiefly revolve around residential property, and someof the restrictions on fees envisioned those usages. He is in favor of passing this bill because commercial borrowers are racking up large fees with them and then reinstating their loan, and there's nothing they can do about it. Les Alke, on behalf of the Montana Bankers Association, appeared in support of the bill (see witness sheet attached as Exhibit 3). He testified that it is not only the banks that would benefit from this, as all mortgage lenders suffer the same.

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: Senator Crippen asked what reinstatement causes you to do extra for expenses that taking it to foreclosure doesn't do. Mr. Brown stated that when they make a loan, they make sure they have adequate value in the property. If they own the property, they are in a position to recover those costs. In a reinstatement, it has become a game to some people to string the bank along. Senator Crippen asked what portion of their loan portfolio plays games. Mr. Brown responded there are some people who know the law and take advantage of it. Senator Crippen asked if they felt they were adequately compensated with the 5% when they take it to foreclosure. Mr. Brown responded yes. Senator Crippen stated he is reluctant to put no cap on

Page 2, line 9.
Following: "age"
Insert: "and unable because of physical or mental condition to adequately protect himself or his property"

Senator Mazurek stated we are weakening the reporting requirements to strengthen the penalty provision. The motion to amend carried unanimously. Senator Mazurek stated the only question that remains is whether we want to leave exploit in the penalty provisions. He further stated our objective is good, but we have the potential problem of dealing with the person over 60. There is a potential for abuse, and we have tightened it up substantially. Senator Towe moved SB 54 be recommended DO PASS AS AMENDED. Senator Shaw stated if you had to amend the bill that much, it must not be good, so the committee should kill it. Senator Towe responded this bill was brought into this committee to work on the language of the bill, and it has the support of another committee, but the purpose was not to consider if the bill should or shouldn't pass, but to work on the language. Senator Brown stated he still shares Senator Daniels' feeling about this whole idea of legislation, but he has been placated by Senator Towe's amendment. Senator Brown moved as a substitute motion SB 54 be amended as follows:

Page 2, line 21.
Following: "abuses"
Strike: ","
Insert: "or"
Following: "neglects"
Strike: ", or exploits"

Senator Mazurek stated that would eliminate the penalty for exploitation. Senator Towe stated he opposed the motion for the reasons previously given. Senator Yellowtail stated he also opposed the motion, believing that although there are cases for misinterpretation of the word "exploitation," there are many cases of clear exploitation. Senator Pinsoneault also opposed the motion. The motion to amend failed (see roll call vote attached as Exhibit 6). Senator Towe's motion to recommend the bill DO PASS AS AMENDED was then considered and carried with Senator's Daniels, Galt, and Shaw voting in opposition.

FURTHER CONSIDERATION OF SB 110: Proposed amendments from the Montana Trial Lawyers Association (Exhibit 7) and from Blue Cross and Blue Shield (Exhibit 8) were distributed to the committee. Senator Towe stated he was pleased with the proposal made by the Montana Trial Lawyers Association, particularly the one that says it doesn't apply unless the parties have been represented by counsel and shown by the counsel's signature. Karl Englund, from the Montana Trial Lawyers Association, explained their proposal has divided section 4 into two

subsections; anyone can agree to arbitrate now; subsection 2 deals with future arbitration; they took "irrevocable" out; in terms of exceptions to the act, the three with which they are most concerned are a, b, and c; the two exceptions on the second page are generally found in states that have adopted the uniform act; the Division of Workers' Compensation believes their laws would supersede this; the Public Employees' Bargaining Act would prevent anything under (e); (d) and (e) are questions of law, no so much questions of policy. John Alke, representing Blue Shield, stated they are opposed to the amendments and think they are unnecessary. He stated that actions for personal injury are always exempt, and any tort action will be outside the scope of the act. He believes (c) essentially exempts all contracts, as few people have their lawyers negotiate their contracts and then sign for them. Mr. Alke stated he does not believe the proposed amendments accomplish what the Trial Lawyers are suggesting. He stated the Uniform Arbitration Act and the concept of bad faith have no parity. He stated it is a uniform act, so every time you put an exception in there, it will not be a uniform act. Senator Towe asked how you are going to protect the individual who is not on an equal bargaining position. Mr. Alke responded you cannot deprive a Montana citizen of a tort remedy in the Montana courts if a tort were committed in Montana. Steve Brown, representing Blue Cross, stated the purpose of the bill is to zero in on those types of issues without destroying the concept of bad faith. He suggested the committee look at the summary of how the uniform law has been amended. It is clearly the minority of states who have adopted it without any exceptions. Senator Mazurek questioned how a health service organization would use arbitration. Mr. Alke responded they would use it if they had a specific problem, as all of their groups are trying to limit the maximum exposure of the group. Mr. Brown responded you cannot amend the constitution through this act; you can't take away constitutional rights through this act; he suggests you can't force someone to arbitrate outside the state of Montana either. Senator Towe moved the proposed amendments by the Montana Trial Lawyers Association be adopted. Senator Pinsoneault stated that when you have a uniform act, he is suspect of people that try to amend things out. He asked Mr. Petesch if there have been that many amendments or changes to the uniform act in other states. Mr. Petesch responded that 17 states have carved out amendments. He further explained that what the Trial Lawyers have proposed are in at least one of these states. Senator Mazurek stated the concern for uniformity is particularly important when you get into the procedural portions of the act. Senator Towe stated if you get the uniform laws, they tell you exactly where states have changed the uniform act. The motion to adopt the Montana Trial Lawyers Association's proposed amendments failed (see roll call vote attached as Exhibit 9). Senator Towe moved SB 110 be recommended DO NOT PASS. The motion was withdrawn in order to allow Senators Daniels and Pinsoneault additional time to review the bill.

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

February 6, 1985

The twenty-second meeting of the Senate Judiciary Committee was called to order at 10:06 a.m. on February 6, 1985, by Chairman Joe Mazurek in Room 325 of the Capitol Building.

ROLL CALL: All committee members were present, with the exception of Senator Blaylock who was excused.

CONSIDERATION OF SB 186: Senator Matt Himsl, principal sponsor of the bill, testified SB 186 sets up a commission for sentencing guidelines and provides for termination of the commission in two years. The intent of the bill is to address the problem that has evolved concerning incarceration in all of our institutions. The bill stems from real community concern with the lack of uniformity in this system and also because of the cost. In 1984, we had 1,010 people in our institutions and 2,564 on parole and probation. This cost us $21,931,308 in 1984. They have 803 in there now and the place wasn't built for that number. Something must be done, and we should address this whole problem. They propose to set up a commission which they can sunset in two years to study this problem and come up with some guidlines. Senator Himsl distributed to the committee a copy of the Minnesota sentencing guidelines (Exhibit 1). He is asking that those people who are working in the corrective community would be the ones to serve on the commission. He doesn't feel the legislature should set sentencing guidelines, because it does not have the capability to form these type of judgments. This idea is not new. There has been some movement in this state through the past for a voluntary committee. This bill follows that up and puts this commission into statute so we will have something done in two years. The bill provides the commission can receive gifts or grants from people interested in funding it. The fiscal note shows it will cost about $17,000 to fund. The legislature designates the crimes and sets the maximum and minimum, so he feels it has the authority to set the limits within the limits; and to do and to do that, they need the experience of the people within the corrective community. One of the interesting things in Minnesota is they did away with parole. They have directed themselves to shorten sentences and not have parole. He would hope that through the efforts of this type of commission, we might have the same performance. We should have someone take an objective view of our problem.

is no court action filed in these types of foreclosures. Senator Pinsoneault asked whether Senator VanValkenburg's question was whether the percentage was based on the total amount of the note or simply on what is due. Senator Mazurek stated it is based upon the total amount of the note, because once the payment is not made, notice is given for default, and it must be corrected within 30 days. Once the action starts, the total amount is claimed. Senator Pinsoneault asked if it is reinstated, the amount still remains as the total. or if it goes to default, it remains the same. Senator Mazurek replied no. If it goes to sale, we are governed by the earlier part of the statute which we are not amending which is 5%. Senator Blaylock pointed out this bill is trying to get a reasonable amount of money to the attorney and the bank for their work. Senator Mazurek pointed out you are going through all of the preparation to sell the property, and the bank may be charged more than it can recover. Senator Daniels suggested providing the total fees shall not be less than $350 or $2,500. Senator Towe replied he likes that approach but wondered if the figures were right. He felt $1,000-1,500 would be better. Senator Galt asked how this would apply to a huge supermarket on seven acres of ground. Senator Towe suggested the figures be $250 to $1,500. Senator Shaw stated he has some reservations about this bill; it is a bill for the banks; he doesn't believe we need it. Senator Galt moved SB 185 be recommended DO PASS as is. Senator Towe moved as a substitute motion to amend SB 185 as follows:

Page 1, line 24.
Following: "EXCEED"
Insert: "the lesser of $1,500 or"

Senator Yellowtail stated he liked the way Senator Towe has proposed this. Senator Towe stated he thinks the real concern is where you have a $10,000 foreclosure and you apply the 10%, giving you only $100. This amendment would at least remedy that situation. Senator Mazurek pointed out this helps the bank on the little foreclosure, and that is where they get burned. The motion to amend carried unanimously. Senator Brown moved as a substitute motion SB 185 be recommended DO PASS AS AMENDED. The motion carried unanimously.

FURTHER CONSIDERATION OF SB 110: Chairman Mazurek stated the Montana Trial Lawyers Association has been working with Steve Brown on behalf of Blue Cross and John Alke on behalf of Montana Physicians Service. The amendments on Exhibit 2 are the result of those discussions. The group health providers would like to be able to arbitrate the issue of medical necessity. Amendment No. 7 would allow arbitration to occur in Montana. Steve Brown stated this is broader than medical necessity. Senator Tow asked if he would accept limiting it to that. Mr. Brown responded what they want is medical necessity and pre-existing condition, although their amendment is broader than that. Senator Towe stated he had some

problems about the scope of coverage. Mr. Petesch explained all of these exceptions as to when it is not covered only apply to a pre-existing agreement to arbitrate. It's up to the parties to agree to arbitrate if something comes up later. Senator Mazurek suggested adding a subsection (4) as follows:

> "(4) Notice that a contract is subject to arbitration pursuant to [this act] shall be typed in underlined capital letters on the first page of the contract; and unless such notice is displayed thereon, the contract may not be subject to arbitration."

TABLING OF SB 63: Senator Blaylock moved SB 63 be TABLED. The motion carried unanimously.

ACTION ON SB 110: Senator Pinsoneault moved the adoption of the amendments submitted, along with Senator Mazurek's suggested subsection (4). The motion carried unanimously. Senator Pinsoneault moved SB 110 be recommended DO PASS AS AMENDED. The motion carried with Senator Daniels voting in opposition.

ACTION ON SB 240: Proposed amendments to SB 240 were distributed to the committee (Exhibit 3). Senator Shaw moved SB 240 be recommended DO NOT PASS. Senator Towe pointed out the proposed amendments attempt to save the bill. He thinks it gives advantage to the defense and to the prosecution because it works both ways. Senator Shaw stated we are trying to inject something into our criminal justice system that is no good. Mr. Petesch stated because the rules of evidence were promulgated and the legislature did not change them within two sessions, this bill probably doesn't do anything. Senator Pinsoneault stated if it is not going to be used in a probationary hearing, it should be killed. The motion carried with Senators Brown, Mazurek, Towe, and Yellowtail voting in opposition.

There being no further business to come before the committee, the meeting was adjourned.

Committee Chairman

ROLL CALL

SENATE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985 Date 02/06/

NAME	PRESENT	ABSENT	EXCUSED
Senator Chet Blaylock			X
Senator Bob Brown	X		
Senator Bruce D. Crippen	X		
Senator Jack Galt	X		
Senator R. J. "Dick" Pinsoneault	X		
Senator James Shaw	X		
Senator Thomas E. Towe	X		
Senator William P. Yellowtail, Jr.	X		
Vice Chairman Senator M. K. "Kermit" Daniels	X		
Chairman Senator Joe Mazurek	X		

STANDING COMMITTEE REPORT

February 6 19 85

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration SENATE BILL No. 110

first reading copy (white color)

ADOPT UNIFORM ARBITRATION ACT.

Respectfully report as follows: That SENATE BILL No. 110

be amended as follows:

1. Title, line 6.
Following: "TO"
Strike: "LABOR"
Insert: "CERTAIN"

2. Page 1, line 25.
Following: line 24, "agreement"
Insert: "--exceptions"
Following: "written agreement."
Insert: "(1)"

3. Page 2, line 1.
Following: "arbitration"
Strike: remainder of line 1 through "made" on line 3

4. Page 2, line 3.
Following: "valid"
Strike: ","
Insert: "and"

5. Page 2, line 4.
Following: "enforceable"
Strike: ", and irrevocable"

~~DO PASS~~

~~DO NOT PASS~~

Chairman.

SENATE BILL 110

6. Page 2, line 6.
Following: line 5
Insert: "(2) Except as provided in subsection (3), a written agreement to submit to arbitration any controversy arising between the parties after the contract is made is valid and enforceable except upon such grounds as exist at law or in equity for the revocation of a contract. This subsection does not apply to:

(a) claims arising out of personal injury, based on contract, or tort;

(b) any agreement concerning or relating to insurance policies or annuity contracts except for those contracts between insurance companies;

(c) any agreement which has not been concluded upon the advise of counsel to all parties as evidenced by counsel's signature thereto;

(d) claims for workers' compensation; and

(e) arbitration agreements between employers and employees or their respective representatives unless the agreement provides that (this act) applies.

(3) The prohibitions and requirements of subsection (2) do not apply to or affect the validity of arbitration agreements under a membership contract as defined in 33-30-101(3) concerning only questions of medical necessity or whether the injury or illness is a preexisting condition.

(4) Notice that a contract is subject to arbitration pursuant to (this act) shall be typed in underlined capital letters on the first page of the contract; and unless such notice is displayed thereon, the contract may not be subject to arbitration."

7. Page 11, line 15.
Following: "directs."
Insert: "No agreement concerning venue involving a resident of this state is valid unless the agreement requires that arbitration occur within the state of Montana. This requirement may only be waived upon the advice of counsel as evidenced by counsel's signature thereto."

AND AS AMENDED

DO PASS

Senator Joe Mazurek

19

CLERICAL

Date: 7/16/85

Time: 5 PM

Senate Bill 110

In accordance with Joint Rule 3-7(b) the following clerical errors may be corrected:

Senate Judiciary Rep of 7/6

amendment 6 in new (c)

"...upon the advice" (SA.)

amendment 2 p. 1, l. 25

following: "agreement" (first word l. 25)

insert: "-- exceptions"

following: "."

insert: "(1)"

Mazurek

~~Sponsor~~

Secretary of Senate
or
Chief Clerk

Legislative Council

(To be kept current -- post bills when entering, being heard or leaving committee.) Form CS-32

STATUS SHEET

FORTY-NINTH LEGISLATIVE SESSION

COMMITTEE ON JUDICIARY

SENATE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
SB 105	2/27/85	3/13/85	3/13/85					3/13/85	
SB 110	2/27/85	3/13/85	3/13/85					3/13/85	
SB 119	2/27/85	3/13/85 3/21/85	3/21/85					3/21/85	
SB 132	2/27/85	3/12/85	3/12/85				3/12/85		
SB 144	2/27/85	3/11/85	3/11/85					3/11/85	
SB 151	2/27/85	3/14/85	3/14/85					3/14/85	
SB 152	2/27/85	3/22/85	3/22/85					3/22/85	
SB 184	2/27/85	3/18/85	3/18/85					3/18/85	
SB 185	2/27/85	3/14/85	3/14/85					3/14/85	
SB 186	2/27/85	3/14/85	3/14/85					3/14/85	
SB 200	2/27/85	3/18/85	Died						
SB 230	2/27/85	3/14/85	3/14/85				3/14/85		
SB 235	2/27/85	3/14/85	3/14/85				3/14/85		
SB 298	2/27/85	3/18/85	3/18/85				3/18/85		
SB 314	2/27/85	3/18/85	3/18/85					3/18/85	
SB 321	2/27/85	3/18/85 3/26/85	3/26/85					3/26/85	

MINUTES FOR THE MEETING
JUDICIARY COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

February 13, 1985

The meeting of the Judiciary Committee was called to order by Chairman Tom Hannah on Wednesday, February 13, 1985 at 8:00 a.m. in Room 312-3 of the State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF HOUSE BILL NO. 164: Rep. Dorothy Bradley District #79, chief sponsor of the bill, testified. Rep. Bradley submitted a copy of a letter from a person who had experienced the exact problem that this bill is trying to address. The letter was marked as Exhibit A and attached hereto. This bill is an act to require at least 180 days' written notice by a landlord of a mobile home rental space who wishes a tenant to vacate. Rep. Bradley said the way the Landlord Tenant Act is written now, a thirty day notice is required prior to terminating a tenancy. If it is a week-to-week tenancy, a written notice is required at least 7 days before the termination date specified in the notice. She stated that the problems that individuals run into is that if they simply get a 30-day notice -- say in the middle of the winter -- it is very difficult, particularly in some cities, to find another space. Even to move the home is a considerable burden.

PROPONENTS: Also speaking on behalf of the bill was Linda McNiel, an attorney from Bozeman and a member of the Bozeman Housing Coalition. She informed the members of the problems people face when asked to vacate their tenancy on such short notice. A copy of her testimony was marked Exhibit B and attached hereto.

Yogi Bir Singh Khulsa from Bozeman, appeared and offered testimony in support of HB 164. His written statement was marked as Exhibit C and is attached hereto.

Marcia Youngman, Coordinator of the Bozeman Housing Coalition, testified in support of this bill. A copy of her testimony was marked as Exhibit D and is attached hereto.

Debra L. DeBode from Bozeman testified in support of HB 164. A copy of her written testimony was marked Exhibit E and is attached hereto.

Leota Dempsey, representing the Montana Peoples' Action, testified in support of both HB 164 and HB 360. A copy of

There being no further questions, hearing closed on SB 105.

CONSIDERATION OF SENATE BILL NO. 110: Senator Joe Mazurek, District #23, principle sponsor of SB 110, testified on its behalf. This bill will adopt the Uniform Arbitration Act in Montana which is in existence in 42 other states. The bill sets forth the procedure of going through the arbitration process. He said this bill is especially valuable in construction and commercial settings. It is used frequently to resolve disputes. He further pointed out that the bill makes a very significant change in Montana law. It allows parties to enter into an agreement today to arbitrate a dispute which arises in the future. That is currently prohibited by Montana law. He said the bill is permissive -- it only allows arbitration when parties agree to it. It is a very valuable dispute resolution tool. He informed the committee that states are adopting this even in the areas of personal injury cases because of court scheduling problems. He also said that lawyers will continue to be involved in this process.

Steve Brown, representing the Blue Cross of Montana, testified as a proponent to this bill. He did say that they were uncertain with regards to the amendments made in section (2) of the bill. Overall, they feel this bill contains significant compromises, and it is a good alternative for dispute resolutions.

Karl Englund, representing the Montana Trial Lawyers Association, pointed out some of the provisions in this bill which were amended into the bill in the Senate Judiciary Committee upon his suggestion. He feels that it is clear that there needs to be some option available to people to resolve disputes through an alternative. This bill provides that mechanism.

LeRoy Schramm, chief legal counsel for the Montana University System, submitted an amendment which was marked Exhibit B and attached hereto. He feels SB 110 is a good bill with the inclusion of the proposed amendment. He said that there is nothing in this act right now that excludes public employment contracts, and presumably, our contracts and contracts of all public employers around the state would be covered by this, and that necessitates the amendment. He said his amendment would reverse the presumption in section 3. It would basically say that labor agreements are out unless they want to come in -- in which case the labor agreement has to specify this.

Terry Carmody, representing the Montana Association of Realtors, wished to go on record as supporting this legislation.

Riley Johnson, representing the Montana Homebuilders Association, stated that they support SB 110 for two basic reasons. He said any way to ease the burden on builders

involving labor disputes is acceptable. By going through the arbitration system, it would help facilitate their jobs of building homes. It would also give them the opportunity in cases where litigation is involved to be able to settle these cases quickly and at a lesser cost. He does, however, object to the amendments which were proposed by Mr. Schramm.

There being no further proponents or opponents, Senator Mazurek closed. He encouraged the committee to adopt the proposed amendments submitted by Mr. Schramm.

The floor was opened to questions.

Rep. Keyser stated that the proposed amendment does take care of a very definite problem that he had originally with this legislation.

Rep. Rapp-Svrcek said he has a problem with subsection (C) of the bill. He doesn't see why parties are required to obtain the services of an attorney especially when they understand the agreement. Senator Mazurek stated that it provides one more step to try to insure that people really understand when they sign an agreement to arbitrate future disputes, they are giving up their rights to go to court.

Mr. England responded to Rep. Rapp-Svrcek's question by saying that an individual is giving up his fundamental right if he signs the agreement to arbitrate under the Montana Constitution Article II, Section 16.

There being no further questions, hearing closed on SB 110.

CONSIDERATION OF SENATE BILL NO. 119: Senator Dorothy Eck, District #40, chief sponsor of SB 119, said this bill addresses the problem of enforcement of child support payments by providing that applicants for the Revenue Department's Child Support Enforcement Services, may not be charged for those services. Rather, the person who is obligated to pay the support (but is not doing so) must pay any administrative costs. She said that many ex-spouses go to great lengths of trying to get out of making child support payments. She said that when this bill was considered in the Senate Judiciary Committee, women testified as to how tight their budgets were, and how it really does make a difference when a part of the money they are supposed to receive is not received. She submitted a copy of a news article she clipped having to do with the Senate Judiciary Committee meeting on this bill. (See Exhibit C.)

Lynn Roberts testified as a proponent to this bill. She said that since the parent who has custody of the child has to provide most of the maintenance for that child, that parent should not have to be required to pay the state's costs of tracking delinquent parents down.

Rep. Miles was concerned that if this language is deleted, this area would be left open, and people wouldn't be encouraged to carry health insurance.

Following further discussion, Rep. Mercer made a substitute motion to amend page 2, line 4 by striking "MUST" and inserting "MAY". The motion was seconded by Rep. Addy. The question was called, and the motion carried with Rep. Keyser dissenting.

Rep. Krueger moved on page 2, line 10 following "INSURANCE" insert ", assume financial responsibility". The motion was seconded by Rep. Miles. Rep. Krueger wants to make it clear that parents must assume financial responsibility for their children's health care.

Rep. Addy questioned whether or not this additional language would be placing a big loophole in the bill.

The question was called, and the motion failed on a voice vote.

Rep. Brown further moved that SB 105 BE CONCURRED IN AS AMENDED. The motion was seconded by Rep. O'Hara and carried with Rep. O'Hara dissenting. Rep. Miles offered to carry the bill on the floor.

ACTION ON SENATE BILL NO. 110: Rep. Addy moved that SB 110 BE CONCURRED IN. The motion was seconded by Rep. O'Hara and discussed. Rep. Keyser moved to adopt the amendments proposed by Mr. Schramm at the hearing. The motion was seconded by Rep. O'Hara and carried unanimously.

Rep. Krueger moved to strike section 4, subsection (2) and (3) in their entirety. The motion was seconded by Rep. Brown. Rep. Krueger feels that the other provisions of the insurance contract law should apply. It was Rep. Keyser's opinion if this subsection is deleted, it will decrease the effectiveness of the arbitration panel.

Rep. Hannah spoke against the motion to amend by saying that there needs to be some sort of basis provided for people who wish to arbitrate. He feels this is an appropriate way to handle it.

Rep. Mercer spoke in favor of the amendment. He says the part of the bill that scares him is section 4 subsection (2) providing that a party may agree to arbitrate future disputes before they arise, before the substance of the controversy is known. Thus, an individual is waiving his right to go to court before he knows what the controversy will be. He said that an individual could still agree to arbitrate an existing dispute in these subject areas if these subsections were deleted.

The question was called on Rep. Krueger's amendment, and the motion carried with Rep. Hannah dissenting.

Because Rep. Addy was absent at this time, Rep. Brown moved on his behalf to amend page 2, line 13, following "INJURY" by inserting "whether". Furthermore, on page 2, line 14, following "CONTRACT" strike ",". The motion was seconded by Rep. Mercer and carried unanimously.

Rep. Hannah moved to strike subsection (C) on page 2 in its entirety. He feels that it is unnecessary to require that both attorneys must sign contracts upon its conclusion. He feels that it is a hindrance to the arbitration process. The motion was seconded by Rep. Rapp-Svrcek, and the motion carried with Rep. Montayne and Rep. Brown dissenting.

Rep. Brown moved that SB 110 BE CONCURRED IN AS AMENDED. The motion was seconded by Rep. O'Hara and carried unanimously. Rep. Addy will carry the bill.

ACTION ON SENATE BILL NO. 119: Rep. Darko moved that SB 119 BE CONCURRED IN. The motion was seconded by Rep. Brown and discussed.

Mr. Shober said that he gave a wrong figure previously. He said $16,000 was the net return to the state for application fees and collection fees; $54,000 was the total, so the difference between $16,000 and $54,000 would have gone to the federal government which would be approximately $38,000. If the bill is passed in its present form, it would constitute free services to anybody who would like to come in and apply for the department's service. If that happens, their caseload will double or triple, which will increase their costs.

Rep. Hannah asked if the fees are currently being collected by the department. Mr. Shober said some are being collected and some are not being collected. At the present time, the department doesn't have the capability to compute some of them.

Rep. Brown asked if the question really boils down to whether we worry more about paying the department's bills or seeing that the child support be paid. Mr. Shober said that could be an interpretation. Rep. Brown said he is sure the department isn't in a position to say that the person to whom the child support is due should not receive as much or all of it as is possible. He asked if there was any way to amend this bill that would solve that problem. Mr. Shober said he is not sure. He stated that their proposal would be that before giving the obligor credit for 100% of the payment even though the department was getting 10%, the obligor would be charged to give him credit for the next payment.

54

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 3/13/85

NAME	PRESENT	ABSENT	EXCUSED
Tom Hannah (Chairman)	✓		
Dave Brown (Vice Chairman)	✓		
Kelly Addy	✓		
Toni Bergene	✓		
John Cobb	✓		
Paula Darko	✓		
Ralph Eudaily	✓		
Budd Gould	✓		
Edward Grady	✓		
Joe Hammond	✓		
Kerry Keyser	✓		
Kurt Krueger	✓		
John Mercer	✓		
Joan Miles	✓		
John Montayne	✓		
Jesse O'Hara	✓		
Bing Poff	✓		
Paul Rapp-Svrcek	✓		

HOUSE

STANDING COMMITTEE REPORT

March 13 19 85

MR. Speaker:

We, your committee on Judiciary

having had under consideration Senate Bill No. 110

Third reading copy (Blue color)

ADOPT UNIFORM ARBITRATION ACT

Respectfully report as follows: That Senate Bill No. 110

be amended as follows:

1. Page 1, line 20.
Following: "agreements."
Strike remainder of section 3 in its entirety.
Insert: "Arbitration agreements between employers and employees or between their respective representatives are valid and enforceable and may be subject to all or portions of [sections 1 through 21] if the agreement so specifies, except [section 15(1), (3), (4), and (5) and section 16] apply in every case."

2. Page 2, line 7.
Following: "(2)"
Strike: "EXCEPT" through "(3),"

3. Page 2, line 13.
Following: "INJURY,"
Insert: "whether"

(continued)

Chairman.

4. Page 2, line 14.
Following: "CONTRACT"
Strike: ","

5. Page 2, line 17.
Following: "COMPANIES;"
Strike: subsection (C) in its entirety.
Insert: "and"

Renumber subsequent subsection

6. Page 2, line 21.
Following: "COMPENSATION"
Strike: "; AND" through "APPLIES" on line 24.

7. Page 2, following line 24.
Strike: subsection (3) in its entirety.

Renumber subsequent subsection.

3/13

AND AS AMENDED, BE CONCURRED IN

Tom Hannah

REP. TOM HANNAH Chairman.

VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

BILL NO. SB 105 (Sen. Regan); SB 110 (Sen. Mazurek); ~~SB 119 (Sen. Eck)~~ DATE March 13, 1985

SPONSOR

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Karl England	Mt. Trial Lawyers	SB 110	
Dennis Shober	State Revenue CS	SB 105 SB 119	
Lynn Roberts	myself	SB 105 SB 119	
Anne Bradsky	WLF	SB 105 SB 119	
Terry Cummings	REALTORS	SB 110	
Steve Brown	Blue Cross	SB 110	
Riley Johnson	Mont. Home Builders	SB 110	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

CS-33

EXHIBIT B
3/13/85
SB 110

Amend S.B. 110 to read as follows:

Page 1, lines 19 to 23, amend Section 3 to read as follows:

NEW SECTION. Section 3. Application to labor agreements. Arbitration agreements between employers and employees or between their respective representatives are valid and enforceable and may be subject to all or portions of [Section 1 through 21] if the agreement so specifies, except [Section 15, Subsections 1, 3, 4 and 5 and Section 16] which shall apply in every case.

Page 2, delete lines 22 through 24.

SENATE BILL NO. 110

INTRODUCED BY MAZUREK, HALLIGAN

A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING THE UNIFORM ARBITRATION ACT AND CONFORMING OTHER STATUTORY PROVISIONS THERETO; PROVIDING FOR APPLICABILITY TO ~~LABOR~~ CERTAIN AGREEMENTS; AMENDING SECTIONS 2-18-621, 27-1-412, 28-2-708, AND 71-3-801, MCA; AND REPEALING SECTIONS 27-5-101 THROUGH 27-5-105, 27-5-201 THROUGH 27-5-203, AND 27-5-301 THROUGH 27-5-304, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1 through 21] may be cited as the "Uniform Arbitration Act".

NEW SECTION. Section 2. Uniformity of interpretation. [Sections 1 through 21] must be construed to effectuate [their] general purpose to make uniform the law of those states that enact [them].

NEW SECTION. Section 3. Application to labor agreements. ~~[Sections 1 through 21] apply to arbitration agreements between employers and employees or between their respective representatives unless otherwise provided in the agreement.~~ ARBITRATION AGREEMENTS BETWEEN EMPLOYERS AND EMPLOYEES OR BETWEEN THEIR RESPECTIVE REPRESENTATIVES ARE VALID AND ENFORCEABLE AND MAY BE SUBJECT TO ALL OR PORTIONS OF [SECTIONS 1 THROUGH 21] IF THE AGREEMENT SO SPECIFIES, EXCEPT [SECTION 15(1), (3), (4), AND (5) AND SECTION 16] APPLY IN EVERY CASE.

NEW SECTION. Section 4. Validity of arbitration agreement -- EXCEPTIONS. (1) A written agreement to submit an existing controversy to arbitration ~~or a provision in a written contract to submit to arbitration any controversy arising between the parties after the contract is made~~ is valid, AND enforceable, ~~and irrevocable~~ except upon such grounds as exist at law or in equity for the revocation of a contract.

(2) ~~EXCEPT AS PROVIDED IN SUBSECTION (3),~~ A WRITTEN AGREEMENT TO SUBMIT TO ARBITRATION ANY CONTROVERSY ARISING BETWEEN THE PARTIES AFTER THE CONTRACT IS MADE IS VALID AND ENFORCEABLE EXCEPT UPON SUCH GROUNDS AS EXIST AT LAW OR IN EQUITY FOR THE REVOCATION OF A CONTRACT. THIS SUBSECTION DOES NOT APPLY TO:

(A) CLAIMS ARISING OUT OF PERSONAL INJURY, WHETHER BASED ON CONTRACT, OR TORT;

(B) ANY AGREEMENT CONCERNING OR RELATING TO INSURANCE POLICIES OR ANNUITY CONTRACTS EXCEPT FOR THOSE CONTRACTS BETWEEN INSURANCE COMPANIES; AND

~~(C) ANY AGREEMENT WHICH HAS NOT BEEN CONCLUDED UPON THE ADVICE OF COUNSEL TO ALL PARTIES AS EVIDENCED BY COUNSEL'S SIGNATURE THERETO,~~

Montana Legislative Council

REFERENCE BILL

~~(D)~~(C) CLAIMS FOR WORKERS' COMPENSATION~~,~~ ~~AND~~

~~(E)--ARBITRATION---AGREEMENTS---BETWEEN--EMPLOYERS--AND EMPLOYEES-OR-THEIR--RESPECTIVE--REPRESENTATIVES--UNLESS--THE AGREEMENT-PROVIDES-THAT-(THIS-ACT)-APPLIES.~~

~~(3)--THE--PROHIBITIONS--AND--REQUIREMENTS-OF-SUBSECTION (2)-DO-NOT-APPLY-TO-OR-AFFECT-THE--VALIDITY--OF--ARBITRATION AGREEMENTS---UNDER--A--MEMBERSHIP--CONTRACT--AS--DEFINED--IN 33-30-101(3)-CONCERNING-ONLY-QUESTIONS-OF-MEDICAL-NECESSITY, EXPERIMENTAL-TREATMENT,-OR-WHETHER-THE-INJURY-OR-ILLNESS--IS A-PREEXISTING-CONDITION.~~

~~(4)~~(3) NOTICE THAT A CONTRACT IS SUBJECT TO ARBITRATION PURSUANT TO [THIS ACT] SHALL BE TYPED IN UNDERLINED CAPITAL LETTERS ON THE FIRST PAGE OF THE CONTRACT; AND UNLESS SUCH NOTICE IS DISPLAYED THEREON, THE CONTRACT MAY NOT BE SUBJECT TO ARBITRATION.

NEW SECTION. Section 5. Proceedings to compel or stay arbitration. (1) On the application of a party showing an agreement described in [section 4] and the opposing party's refusal to arbitrate, the district court shall order the parties to proceed with arbitration; but if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of that issue raised and shall order arbitration if it finds for the applying party or deny the application if it finds for the opposing party.

(2) On application, the district court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. Such an issue, when in substantial and bona fide dispute, shall be immediately and summarily tried and the stay ordered if the court finds for the applying party. If the court finds for the opposing party, it shall order the parties to proceed to arbitration.

(3) If an issue referable to arbitration under the alleged agreement is involved in an action or proceeding pending in a court having jurisdiction to hear applications under subsection (1), the application must be made in that court. Otherwise, and subject to [section 20], the application may be made in any court of competent jurisdiction.

(4) An action or proceeding involving an issue subject to arbitration must be stayed if an order or application for arbitration has been made under this section. If an issue is severable, the stay may be with respect to the severable issue only. When the application is made in such action or proceeding, the order for arbitration shall include such stay.

(5) An order for arbitration may not be refused on the ground that the claim in issue lacks merit or good faith or because no fault or grounds for the claim sought to be

arbitrated have been shown.

NEW SECTION. Section 6. Appointment of arbitrators. If the arbitration agreement provides a method of appointment of arbitrators, this method shall be followed. If no method is provided, the agreed method fails or for any reason cannot be followed, or an appointed arbitrator fails or is unable to act and his successor has not been duly appointed, the district court on application of a party shall appoint one or more arbitrators. An arbitrator so appointed has all the powers of one specifically named in the agreement.

NEW SECTION. Section 7. Majority action by arbitrators. The powers of the arbitrators may be exercised by a majority unless otherwise provided by the agreement or by [sections 1 through 21].

NEW SECTION. Section 8. Hearing. Unless otherwise provided by the agreement, the following apply:

(1) The arbitrators shall appoint a time and place for the hearing and cause notification to the parties to be served personally or by certified mail not less than 5 days before the hearing. Appearance at the hearing waives such notice. The arbitrators may adjourn the hearing from time to time as necessary and, on request of a party and for good cause or upon their own motion, may postpone the hearing to a time not later than the date fixed by the agreement for

making the award unless the parties consent to a later date. The arbitrators may hear and determine the controversy upon the evidence produced, notwithstanding the failure of a party duly notified to appear. The district court on application may direct the arbitrators to proceed promptly with the hearing and determination of the controversy.

(2) The parties are entitled to be heard, present evidence material to the controversy, and cross-examine witnesses appearing at the hearing.

(3) The hearing must be conducted by all the arbitrators, but a majority may determine any question and render a final award. If during the course of the hearing an arbitrator for any reason ceases to act, the remaining arbitrator or arbitrators appointed to act as neutrals may continue with the hearing and determination of the controversy.

NEW SECTION. Section 9. Representation by attorney. A party has the right to be represented by an attorney at any proceeding or hearing under [sections 1 through 21]. A waiver of this right prior to the proceeding or hearing is ineffective.

NEW SECTION. Section 10. Witnesses, subpoenas, and depositions. (1) The arbitrators may issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence and may administer

oaths. Subpoenas so issued must be served and, upon application to the district court by a party or the arbitrators, enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action in district court.

(2) On the application of a party and for use as evidence, the arbitrators may permit a deposition to be taken, in the manner and upon the terms designated by the arbitrators, of a witness who cannot be subpoenaed or is unable to attend the hearing.

(3) All provisions of law compelling a person under subpoena to testify are applicable to persons subpoenaed under [sections 1 through 21].

(4) Fees for attendance as a witness are the same as for a witness in the district court.

NEW SECTION. Section 11. Award. (1) The award must be in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy to each party personally by certified mail or as provided in the agreement.

(2) An award must be made within the time fixed by the agreement or, if no time is fixed, within such time as the district court orders on application of a party. The parties may extend the time, in writing, either before or after the expiration thereof. A party waives the objection that an

award was not made within the time required unless he notifies the arbitrators of his objection prior to the delivery of the award to him.

NEW SECTION. Section 12. Change of award by arbitrators. On the application of a party or, if an application to the court is pending under [section 14, 15, or 16], on submission to the arbitrators by the court under such conditions as the court may order, the arbitrators may modify or correct the award upon the grounds stated in [subsections (1)(a) and (1)(c) of section 16] or for the purpose of clarifying the award. The application must be made within 20 days after delivery of the award to the applicant. Written notice thereof shall be given immediately to the opposing party, stating that he must serve his objections thereto, if any, within 10 days from the notice. A modified or corrected award is subject to the provisions of [sections 14, 15, and 16].

NEW SECTION. Section 13. Fees and expenses of arbitration. Unless otherwise provided in the agreement to arbitrate, the arbitrators' expenses and fees, together with other expenses, not including counsel fees, incurred in the conduct of the arbitration, must be paid as provided in the award.

NEW SECTION. Section 14. Confirmation of award by court. Upon the application of a party, the district court

shall confirm an award unless within the time limits imposed in [sections 1 through 21] grounds are urged for vacating, modifying, or correcting the award, in which case the court shall proceed as provided in [sections 15 and 16].

NEW SECTION. Section 15. Vacating an award. (1) Upon the application of a party, the district court shall vacate an award if:

(a) the award was procured by corruption, fraud, or other undue means;

(b) there was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;

(c) the arbitrators exceeded their powers;

(d) the arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of [section 8], as to prejudice substantially the rights of a party; or

(e) there was no arbitration agreement and the issue was not adversely determined in proceedings under [section 5] and the party did not participate in the arbitration hearing without raising the objection.

(2) The fact that the relief was such that it could

not or would not be granted by a court of law or equity is not grounds for vacating or refusing to confirm the award.

(3) An application under this section must be made within 90 days after delivery of a copy of the award to the applicant, except that if it is predicated upon corruption, fraud, or other undue means, it must be made within 90 days after such grounds are known or should have been known.

(4) In vacating the award on grounds other than those stated in subsection (1)(e), the court may order a rehearing before new arbitrators chosen as provided in the agreement or, if the agreement does not provide a method of selection, by the court in accordance with [section 6] or, if the award is vacated on grounds set forth in subsection (1)(c) or (1)(d), the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with [section 6]. The time within which the agreement requires the award to be made is applicable to the rehearing and commences on the date of the order for rehearing.

(5) If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award.

NEW SECTION. Section 16. Modification or correction of award by court. (1) Upon application made within 90 days after delivery of a copy of the award to the applicant, the

district court shall modify or correct the award if:

(a) there was an evident miscalculation of figures or an evident mistake in the description of any person, thing, or property referred to in the award;

(b) the arbitrators awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or

(c) the award is imperfect in a matter of form not affecting the merits of the controversy.

(2) If the application is granted, the court shall modify and correct the award to effect its intent and shall confirm the award as modified and corrected. Otherwise, the court shall confirm the award as made.

(3) An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

NEW SECTION. Section 17. Judgment on award -- costs. (1) Upon the granting of an order confirming, modifying, or correcting an award, judgment must be entered in conformity with the order and be enforced as any other judgment. Costs of the application and of the proceedings subsequent thereto and disbursements may be awarded by the court.

(2) The judgment may be docketed as if rendered in an action.

NEW SECTION. Section 18. Applications to court -- how made. Except as otherwise provided, an application to the court under [sections 1 through 21] must be by motion and must be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an order must be served in the manner provided by law for the service of a summons in an action.

NEW SECTION. Section 19. Jurisdiction of district court. The making of an agreement described in [section 4] providing for arbitration in this state confers jurisdiction on the district court to enforce the agreement under [sections 1 through 21] and to enter judgment on an award under the agreement.

NEW SECTION. Section 20. Venue. An initial application must be made to the court of the county in which the agreement provides the arbitration hearing must be held or, if the hearing has been held, in the county in which it was held. Otherwise, the application must be made in the county where the adverse party resides or has a place of business or, if he has no residence or place of business in this state, to the court of any county. All subsequent applications must be made to the court hearing the initial application unless the court otherwise directs. NO AGREEMENT

CONCERNING VENUE INVOLVING A RESIDENT OF THIS STATE IS VALID UNLESS THE AGREEMENT REQUIRES THAT ARBITRATION OCCUR WITHIN THE STATE OF MONTANA. THIS REQUIREMENT MAY ONLY BE WAIVED UPON THE ADVICE OF COUNSEL AS EVIDENCED BY COUNSEL'S SIGNATURE THERETO.

NEW SECTION. Section 21. Appeals. (1) An appeal may be taken from:

(a) an order denying an application to compel arbitration made under [section 5];

(b) an order granting an application to stay arbitration made under [section 5(2)];

(c) an order confirming or denying confirmation of an award;

(d) an order modifying or correcting an award;

(e) an order vacating an award without directing a rehearing; or

(f) a judgment entered pursuant to the provisions of [sections 1 through 21].

(2) The appeal must be taken in the manner and to the same extent as from orders or judgments in a civil action in district court.

Section 22. Section 2-18-621, MCA, is amended to read:

"2-18-621. Unlawful termination. It shall be unlawful for an employer to terminate or separate an employee from his employment in an attempt to circumvent the provisions of

2-18-611, 2-18-612, and 2-18-614. Should a question arise under this section, it shall be submitted to arbitration as provided in ~~Title 27, chapter 5~~ [sections 1 through 21] as if an agreement described in [section 4] is in effect, unless there is a collective bargaining agreement to the contrary applicable."

Section 23. Section 27-1-412, MCA, is amended to read:

"27-1-412. Obligations which cannot be specifically enforced. The following obligations cannot be specifically enforced:

(1) an obligation to render personal service or to employ another therein;

(2) an agreement to marry or live with another;

~~(3) an agreement to submit a controversy to arbitration;~~

~~(4)~~ (3) an agreement to perform an act which the party has not power to perform lawfully when required to do so;

~~(5)~~ (4) an agreement to procure the act or consent of the spouse of the contracting party or of any other third person; or

~~(6)~~ (5) an agreement the terms of which are not sufficiently certain to make the precise act which is to be done clearly ascertainable."

Section 24. Section 28-2-708, MCA, is amended to read:

"28-2-708. Restraints upon legal proceedings void.

Every stipulation or condition in a contract by which any party thereto is restricted from enforcing his rights under the contract by the usual proceedings in the ordinary tribunals or which limits the time within which he may thus enforce his rights is void. This section does not affect the validity of an agreement enforceable under [sections 1 through 21]."

Section 25. Section 71-3-801, MCA, is amended to read:

"71-3-801. Who may have lien -- amount. (1) All threshermen or swathers owning or operating threshing or swathing machines and all owners of combine harvesters and threshers shall have a lien upon the grain and other crops swathed or threshed by said threshing or swathing machine or cut and threshed by said combine harvester and thresher for and on account of the services rendered and the labor performed by them on said grain and crops and which lien may be claimed by the owner of said grain for the reasonable value of such services if same are performed by him. Liens on grain and other crops shall be charged for at the prevailing price for that particular locality in which such grain or other crop is threshed, harvested, or combined, provided notices are given and lien is filed within the time provided by this part.

(2) If the prevailing price for threshing, harvesting, or combining grain or other crop is disputed by the

thresherman or swather and the owner of the grain or other crop, the matter may be submitted to arbitration under the provisions of ~~chapter 5, Title 27~~ [sections 1 through 21]."

NEW SECTION. Section 26. Application not retroactive. This act applies only to agreements made subsequent to October 1, 1985.

NEW SECTION. Section 27. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 28. Repealer. Sections 27-5-101 through 27-5-105, 27-5-201 through 27-5-203, and 27-5-301 through 27-5-304, MCA, are repealed.

-End-

CONFERENCE COMMITTEE REPORT

Report No. 1

APR 22, 19 85

MR. SPEAKER

We, your FREE Conference Committee on

SENATE BILL NO.110, reference copy,

met and considered SENATE BILL NO.110, in its entirety, on APR 22.

We recommend as follows:

1. Page 2, line 22.
Following: "COMPANIES;"
Strike: "AND"

2. Page 2, line 23.
Following: line 22
Insert: "(c) any contract by an individual for the acquisition of real or personal property, services, or money or credit where the total consideration to be paid or furnished by the individual is $35,000 or less; and"

Renumber: subsequent subsection

PC3SB110

And that this Conference Committee report be adopted.

FOR THE SENATE

MAZUREK

TOWE

CRIPPEN

ADOPT REJECT

FOR THE HOUSE

ADDY

COBB

RAPP-SVRCEK

69

SENATE BILL NO. 110

INTRODUCED BY MAZUREK, HALLIGAN

A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING THE UNIFORM ARBITRATION ACT AND CONFORMING OTHER STATUTORY PROVISIONS THERETO; PROVIDING FOR APPLICABILITY TO ~~LABOR~~ CERTAIN AGREEMENTS; AMENDING SECTIONS 2-18-621, 27-1-412, 28-2-708, AND 71-3-801, MCA; AND REPEALING SECTIONS 27-5-101 THROUGH 27-5-105, 27-5-201 THROUGH 27-5-203, AND 27-5-301 THROUGH 27-5-304, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1 through 21] may be cited as the "Uniform Arbitration Act".

NEW SECTION. Section 2. Uniformity of interpretation. [Sections 1 through 21] must be construed to effectuate [their] general purpose to make uniform the law of those states that enact [them].

NEW SECTION. Section 3. Application to labor agreements. ~~[Sections 1 through 21] apply to arbitration agreements between employers and employees or between their respective representatives unless otherwise provided in the agreement.~~ ARBITRATION AGREEMENTS BETWEEN EMPLOYERS AND EMPLOYEES OR BETWEEN THEIR RESPECTIVE REPRESENTATIVES ARE VALID AND ENFORCEABLE AND MAY BE SUBJECT TO ALL OR PORTIONS OF [SECTIONS 1 THROUGH 21] IF THE AGREEMENT SO SPECIFIES, EXCEPT [SECTION 15(1), (3), (4), AND (5) AND SECTION 16] APPLY IN EVERY CASE.

NEW SECTION. Section 4. Validity of arbitration agreement -- EXCEPTIONS. (1) A written agreement to submit an existing controversy to arbitration ~~or a provision in a written contract to submit to arbitration any controversy arising between the parties after the contract is made~~ is valid, AND enforceable, ~~and irrevocable~~ except upon such grounds as exist at law or in equity for the revocation of a contract.

(2) ~~EXCEPT AS PROVIDED IN SUBSECTION (3), A~~ A WRITTEN AGREEMENT TO SUBMIT TO ARBITRATION ANY CONTROVERSY ARISING BETWEEN THE PARTIES AFTER THE CONTRACT IS MADE IS VALID AND ENFORCEABLE EXCEPT UPON SUCH GROUNDS AS EXIST AT LAW OR IN EQUITY FOR THE REVOCATION OF A CONTRACT. THIS SUBSECTION DOES NOT APPLY TO:

(A) CLAIMS ARISING OUT OF PERSONAL INJURY, WHETHER BASED ON CONTRACT, OR TORT;

(B) ANY AGREEMENT CONCERNING OR RELATING TO INSURANCE POLICIES OR ANNUITY CONTRACTS EXCEPT FOR THOSE CONTRACTS BETWEEN INSURANCE COMPANIES; AND

(C) ANY CONTRACT BY AN INDIVIDUAL FOR THE ACQUISITION OF REAL OR PERSONAL PROPERTY, SERVICES, OR MONEY OR CREDIT WHERE THE TOTAL CONSIDERATION TO BE PAID OR FURNISHED BY THE

REFERENCE BILL: Includes Free Conference Committee Report Dated 4-22-85

INDIVIDUAL IS $35,000 OR LESS; AND

~~(c)--ANY--AGREEMENT--WHICH--HAS-NOT-BEEN-CONCLUDED-UPON THE-ADVICE--OF--COUNSEL--TO--ANY--PARTIES--AS--EVIDENCED--BY COUNSEL'S-SIGNATURE-THERETO;~~

~~(b)~~(c) CLAIMS FOR WORKERS' COMPENSATION~~;~~ ~~AND~~

~~(a)--ARBITRATION---AGREEMENTS---BETWEEN--EMPLOYERS--AND EMPLOYEES-OR-THEIR--RESPECTIVE--REPRESENTATIVES--UNLESS--THE AGREEMENT-PROVIDES-THAT-(THIS-ACT)-APPLIES.~~

~~(3)--THE--PROHIBITIONS--AND--REQUIREMENTS-OF-SUBSECTION (2)-DO-NOT-APPLY-TO-OR-AFFECT-THE--VALIDITY--OF--ARBITRATION AGREEMENTS---UNDER--A--MEMBERSHIP--CONTRACT--AS--DEFINED--IN 33-30-101(3)-CONCERNING-ONLY-QUESTIONS-OF-MEDICAL-NECESSITY, EXPERIMENTAL-TREATMENT,-OR-WHETHER-THE-INJURY-OR-ILLNESS--IS A-PREEXISTING-CONDITION.~~

~~(4)~~(3) NOTICE THAT A CONTRACT IS SUBJECT TO ARBITRATION PURSUANT TO [THIS ACT] SHALL BE TYPED IN UNDERLINED CAPITAL LETTERS ON THE FIRST PAGE OF THE CONTRACT; AND UNLESS SUCH NOTICE IS DISPLAYED THEREON, THE CONTRACT MAY NOT BE SUBJECT TO ARBITRATION.

NEW SECTION. Section 5. Proceedings to compel or stay arbitration. (1) On the application of a party showing an agreement described in [section 4] and the opposing party's refusal to arbitrate, the district court shall order the parties to proceed with arbitration; but if the opposing party denies the existence of the agreement to arbitrate,

the court shall proceed summarily to the determination of that issue raised and shall order arbitration if it finds for the applying party or deny the application if it finds for the opposing party.

(2) On application, the district court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. Such an issue, when in substantial and bona fide dispute, shall be immediately and summarily tried and the stay ordered if the court finds for the applying party. If the court finds for the opposing party, it shall order the parties to proceed to arbitration.

(3) If an issue referable to arbitration under the alleged agreement is involved in an action or proceeding pending in a court having jurisdiction to hear applications under subsection (1), the application must be made in that court. Otherwise, and subject to [section 20], the application may be made in any court of competent jurisdiction.

(4) An action or proceeding involving an issue subject to arbitration must be stayed if an order or application for arbitration has been made under this section. If an issue is severable, the stay may be with respect to the severable issue only. When the application is made in such action or proceeding, the order for arbitration shall include such

stay.

(5) An order for arbitration may not be refused on the ground that the claim in issue lacks merit or good faith or because no fault or grounds for the claim sought to be arbitrated have been shown.

NEW SECTION. Section 6. Appointment of arbitrators. If the arbitration agreement provides a method of appointment of arbitrators, this method shall be followed. If no method is provided, the agreed method fails or for any reason cannot be followed, or an appointed arbitrator fails or is unable to act and his successor has not been duly appointed, the district court on application of a party shall appoint one or more arbitrators. An arbitrator so appointed has all the powers of one specifically named in the agreement.

NEW SECTION. Section 7. Majority action by arbitrators. The powers of the arbitrators may be exercised by a majority unless otherwise provided by the agreement or by [sections 1 through 21].

NEW SECTION. Section 8. Hearing. Unless otherwise provided by the agreement, the following apply:

(1) The arbitrators shall appoint a time and place for the hearing and cause notification to the parties to be served personally or by certified mail not less than 5 days before the hearing. Appearance at the hearing waives such

notice. The arbitrators may adjourn the hearing from time to time as necessary and, on request of a party and for good cause or upon their own motion, may postpone the hearing to a time not later than the date fixed by the agreement for making the award unless the parties consent to a later date. The arbitrators may hear and determine the controversy upon the evidence produced, notwithstanding the failure of a party duly notified to appear. The district court on application may direct the arbitrators to proceed promptly with the hearing and determination of the controversy.

(2) The parties are entitled to be heard, present evidence material to the controversy, and cross-examine witnesses appearing at the hearing.

(3) The hearing must be conducted by all the arbitrators, but a majority may determine any question and render a final award. If during the course of the hearing an arbitrator for any reason ceases to act, the remaining arbitrator or arbitrators appointed to act as neutrals may continue with the hearing and determination of the controversy.

NEW SECTION. Section 9. Representation by attorney. A party has the right to be represented by an attorney at any proceeding or hearing under [sections 1 through 21]. A waiver of this right prior to the proceeding or hearing is ineffective.

NEW SECTION. Section 10. Witnesses, subpoenas, and depositions. (1) The arbitrators may issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence and may administer oaths. Subpoenas so issued must be served and, upon application to the district court by a party or the arbitrators, enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action in district court.

(2) On the application of a party and for use as evidence, the arbitrators may permit a deposition to be taken, in the manner and upon the terms designated by the arbitrators, of a witness who cannot be subpoenaed or is unable to attend the hearing.

(3) All provisions of law compelling a person under subpoena to testify are applicable to persons subpoenaed under [sections 1 through 21].

(4) Fees for attendance as a witness are the same as for a witness in the district court.

NEW SECTION. Section 11. Award. (1) The award must be in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy to each party personally by certified mail or as provided in the agreement.

(2) An award must be made within the time fixed by the

agreement or, if no time is fixed, within such time as the district court orders on application of a party. The parties may extend the time, in writing, either before or after the expiration thereof. A party waives the objection that an award was not made within the time required unless he notifies the arbitrators of his objection prior to the delivery of the award to him.

NEW SECTION. Section 12. Change of award by arbitrators. On the application of a party or, if an application to the court is pending under [section 14, 15, or 16], on submission to the arbitrators by the court under such conditions as the court may order, the arbitrators may modify or correct the award upon the grounds stated in [subsections (1)(a) and (1)(c) of section 16] or for the purpose of clarifying the award. The application must be made within 20 days after delivery of the award to the applicant. Written notice thereof shall be given immediately to the opposing party, stating that he must serve his objections thereto, if any, within 10 days from the notice. A modified or corrected award is subject to the provisions of [sections 14, 15, and 16].

NEW SECTION. Section 13. Fees and expenses of arbitration. Unless otherwise provided in the agreement to arbitrate, the arbitrators' expenses and fees, together with other expenses, not including counsel fees, incurred in the

conduct of the arbitration, must be paid as provided in the award.

NEW SECTION. Section 14. Confirmation of award by court. Upon the application of a party, the district court shall confirm an award unless within the time limits imposed in [sections 1 through 21] grounds are urged for vacating, modifying, or correcting the award, in which case the court shall proceed as provided in [sections 15 and 16].

NEW SECTION. Section 15. Vacating an award. (1) Upon the application of a party, the district court shall vacate an award if:

(a) the award was procured by corruption, fraud, or other undue means;

(b) there was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;

(c) the arbitrators exceeded their powers;

(d) the arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of [section 8], as to prejudice substantially the rights of a party; or

(e) there was no arbitration agreement and the issue

was not adversely determined in proceedings under [section 5] and the party did not participate in the arbitration hearing without raising the objection.

(2) The fact that the relief was such that it could not or would not be granted by a court of law or equity is not grounds for vacating or refusing to confirm the award.

(3) An application under this section must be made within 90 days after delivery of a copy of the award to the applicant, except that if it is predicated upon corruption, fraud, or other undue means, it must be made within 90 days after such grounds are known or should have been known.

(4) In vacating the award on grounds other than those stated in subsection (1)(e), the court may order a rehearing before new arbitrators chosen as provided in the agreement or, if the agreement does not provide a method of selection, by the court in accordance with [section 6] or, if the award is vacated on grounds set forth in subsection (1)(c) or (1)(d), the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with [section 6]. The time within which the agreement requires the award to be made is applicable to the rehearing and commences on the date of the order for rehearing.

(5) If the application to vacate is denied and no motion to modify or correct the award is pending, the court

shall confirm the award.

NEW SECTION. Section 16. Modification or correction of award by court. (1) Upon application made within 90 days after delivery of a copy of the award to the applicant, the district court shall modify or correct the award if:

(a) there was an evident miscalculation of figures or an evident mistake in the description of any person, thing, or property referred to in the award;

(b) the arbitrators awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or

(c) the award is imperfect in a matter of form not affecting the merits of the controversy.

(2) If the application is granted, the court shall modify and correct the award to effect its intent and shall confirm the award as modified and corrected. Otherwise, the court shall confirm the award as made.

(3) An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

NEW SECTION. Section 17. Judgment on award -- costs. (1) Upon the granting of an order confirming, modifying, or correcting an award, judgment must be entered in conformity with the order and be enforced as any other judgment. Costs

of the application and of the proceedings subsequent thereto and disbursements may be awarded by the court.

(2) The judgment may be docketed as if rendered in an action.

NEW SECTION. Section 18. Applications to court -- how made. Except as otherwise provided, an application to the court under [sections 1 through 21] must be by motion and must be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an order must be served in the manner provided by law for the service of a summons in an action.

NEW SECTION. Section 19. Jurisdiction of district court. The making of an agreement described in [section 4] providing for arbitration in this state confers jurisdiction on the district court to enforce the agreement under [sections 1 through 21] and to enter judgment on an award under the agreement.

NEW SECTION. Section 20. Venue. An initial application must be made to the court of the county in which the agreement provides the arbitration hearing must be held or, if the hearing has been held, in the county in which it was held. Otherwise, the application must be made in the county where the adverse party resides or has a place of

business or, if he has no residence or place of business in this state, to the court of any county. All subsequent applications must be made to the court hearing the initial application unless the court otherwise directs. NO AGREEMENT CONCERNING VENUE INVOLVING A RESIDENT OF THIS STATE IS VALID UNLESS THE AGREEMENT REQUIRES THAT ARBITRATION OCCUR WITHIN THE STATE OF MONTANA. THIS REQUIREMENT MAY ONLY BE WAIVED UPON THE ADVICE OF COUNSEL AS EVIDENCED BY COUNSEL'S SIGNATURE THERETO.

NEW SECTION. Section 21. Appeals. (1) An appeal may be taken from:

(a) an order denying an application to compel arbitration made under [section 5];

(b) an order granting an application to stay arbitration made under [section 5(2)];

(c) an order confirming or denying confirmation of an award;

(d) an order modifying or correcting an award;

(e) an order vacating an award without directing a rehearing; or

(f) a judgment entered pursuant to the provisions of [sections 1 through 21].

(2) The appeal must be taken in the manner and to the same extent as from orders or judgments in a civil action in district court.

Section 22. Section 2-18-621, MCA, is amended to read:

"2-18-621. Unlawful termination. It shall be unlawful for an employer to terminate or separate an employee from his employment in an attempt to circumvent the provisions of 2-18-611, 2-18-612, and 2-18-614. Should a question arise under this section, it shall be submitted to arbitration as provided in ~~Title 27, chapter 5~~ [sections 1 through 21] as if an agreement described in [section 4] is in effect, unless there is a collective bargaining agreement to the contrary applicable."

Section 23. Section 27-1-412, MCA, is amended to read:

"27-1-412. Obligations which cannot be specifically enforced. The following obligations cannot be specifically enforced:

(1) an obligation to render personal service or to employ another therein;

(2) an agreement to marry or live with another;

~~(3) an agreement to submit a controversy to arbitration;~~

~~(4)~~(3) an agreement to perform an act which the party has not power to perform lawfully when required to do so;

~~(5)~~(4) an agreement to procure the act or consent of the spouse of the contracting party or of any other third person; or

~~(6)~~(5) an agreement the terms of which are not

sufficiently certain to make the precise act which is to be done clearly ascertainable."

Section 24. Section 28-2-708, MCA, is amended to read:

"28-2-708. Restraints upon legal proceedings void. Every stipulation or condition in a contract by which any party thereto is restricted from enforcing his rights under the contract by the usual proceedings in the ordinary tribunals or which limits the time within which he may thus enforce his rights is void. This section does not affect the validity of an agreement enforceable under [sections 1 through 21]."

Section 25. Section 71-3-801, MCA, is amended to read:

"71-3-801. Who may have lien -- amount. (1) All threshermen or swathers owning or operating threshing or swathing machines and all owners of combine harvesters and threshers shall have a lien upon the grain and other crops swathed or threshed by said threshing or swathing machine or cut and threshed by said combine harvester and thresher for and on account of the services rendered and the labor performed by them on said grain and crops and which lien may be claimed by the owner of said grain for the reasonable value of such services if same are performed by him. Liens on grain and other crops shall be charged for at the prevailing price for that particular locality in which such grain or other crop is threshed, harvested, or combined,

provided notices are given and lien is filed within the time provided by this part.

(2) If the prevailing price for threshing, harvesting, or combining grain or other crop is disputed by the thresherman or swather and the owner of the grain or other crop, the matter may be submitted to arbitration under the provisions of ~~chapter 5, Title 27~~ [sections 1 through 21]."

NEW SECTION. Section 26. Application not retroactive. This act applies only to agreements made subsequent to October 1, 1985.

NEW SECTION. Section 27. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 28. Repealer. Sections 27-5-101 through 27-5-105, 27-5-201 through 27-5-203, and 27-5-301 through 27-5-304, MCA, are repealed.

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